

# Ethics in Public Management

Second Edition

H. George Frederickson  
and Richard K. Ghere, Editors

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## Preface

To borrow words from Frank Loesser, this book is the latest product of the “oldest established permanent floating” seminar on ethics in public policy and administration. As Rick Ghre describes in the introduction of this second edition of *Ethics in Public Management*, this floating seminar started twenty years ago. Over the years new ethics scholars have joined in and brought their interests to the seminar. But the primary emphases have remained the same—our insistence that the study of ethics be empirically informed and contextually nailed down. It is notable that, as this floating seminar has moved along, the general study of public sector ethics has also moved along and, we are happy to say, moved generally in the direction of more empiricism and contextualization. Compared to twenty years ago, ethics sermons and ethics as Sunday school lessons are now less often found in serious ethics scholarship. And contemporary ethics scholarship is more applied than it was twenty years ago and is, as a result, more practical and useful.

The subject or field of public sector ethics scholarship has changed in another important way. Our subject or field has found an academic home in the journal *Public Integrity*, now in its fourteenth year. Published quarterly by M.E. Sharpe, *Public Integrity* is the journal of the Section on Public Sector Ethics of the American Society for Public Administration and is supported by the Council on Governmental Ethics Laws, the International City/County Management Association, and the Council of State Governments. *Public Integrity* is in the capable editorial hands of James S. Bowman, editor in chief, and Jonathan P. West, managing editor. The processes of objective peer review brought to the study of public sector ethics by *Public Integrity* have significantly improved the quality of our scholarship.

We thank Harry Briggs, executive editor at M.E. Sharpe, for encouragement, reminders, deadlines, and unflagging support.

Finally, we dedicate the second edition of *Ethics in Public Management* to the memory of John A. Rohr, who died of Parkinson's disease in August 2011. John wrote the foreword to the first book in the "floating ethics seminar" series, *Ethics and Public Administration*, in 1993. He was our great constitutionalist, forever reminding us of our origins and urging us to pay attention to the interplay of law, organization, administration, and democratic government. John was the ethics scholar we all aspire to be.

# Ethics in Public Management



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## Introduction

*Richard K. Ghere*

This volume follows two earlier projects undertaken by Frederickson (1993) and Frederickson and Ghere (2005) to present collections of theoretical essays and empirical analyses on administrative ethics. Three years before the publication of the first volume—Frederickson’s *Ethics and Public Administration*—the National Commission on the Public Service released *Leadership for America* (also known as the Volcker Commission Report) that attested to “the quiet crisis” in government whereby

too many of the best of the nation’s senior executives are ready to leave government, and not enough of its most talented young people are willing to join. This erosion in the attractiveness in public service at all levels—most specifically in the federal civil service—undermines the ability of government to respond effectively to the needs and aspirations of the American people, and ultimately damages the democratic process itself. (1989, xiii)

For the Volcker Commission, the issue of political legitimacy at that time appeared foundational to both the nature of the quiet crisis and proposals to address it. Specifically, the commission’s Task Force on Public Perceptions of the Public Service recognized the causality between perceptions of ethical abuse in government and challenges to legitimacy as follows: “Contributing to the public’s negative image of government is the succession of ethics scandals [and similar failings] . . . The resulting sense of alienation ricochets against public servants” (1990, 64).

Although only a few specific references to improving ethics and professionalism appear within the broad scope of the commission’s recommendations, the

context of the report related administrative ethics to the problem of political legitimacy in a manner generally consistent with this logical syllogism:

1. Legitimacy depends upon trust in government.
2. Perceptions of ethical failures on the part of “faceless bureaucrats” threaten legitimacy.
3. Therefore, ethics reform promises to restore political legitimacy.

Further, the commission’s report implied that the rather straightforward nexus between ethics and public perception could be understood as low-hanging fruit calling for immediate attention in rebuilding the public service. In particular, the report quotes President George H.W. Bush in support of “goal one—rebuild[ing] the public’s trust: It’s not really very complicated. It’s a question of knowing right from wrong, avoiding conflicts of interest, bending over backwards to see that there’s not even a perception of conflict of interest” (1990, 14).

Particular references to ethics and the public trust in the Volcker Commission Report delineated the scope of conversation about public ethics leading up to the conference that George Frederickson convened on the Study of Government Ethics at Park City, Utah, in June 1991 and to the publication of *Ethics and Public Administration* (based on the Park City papers) in 1993. In fact, President Bush’s remark—as clear and forthright as it appears—actually spoke to some rather complex, dialectical conundrums that festered beneath the surface of “government ethics talk” as it related to political legitimacy. The president spoke in earnest that “knowing right from wrong” would seem not at all complicated, but it followed that such awareness might extend beyond matters of law to more generalized public standards and expectations. In this regard, it could be argued that *Leadership for America* more directly addressed the extralegal offenses of “deceit and manipulation” associated with the Vietnam conflict and Watergate affair than with particular illegalities, although these did in fact occur (Jos 1993, 365). In referring to the obligation of “avoiding conflicts of interest, bending over backwards to see that there’s not even a perception of conflict of interest,” President Bush implied that for the public official, conserving the public trust or *legitimacy* is as often a matter of satisfying public perceptions as abiding by the law.

In his “Conclusion” to *Ethics and Public Administration*, Frederickson situated each of that volume’s chapter contributions within various theoretical categories “concerned with what we know about government ethics” (1993, 243). To varying degrees in each of the five categories, he revealed the conceptual wrinkles that follow from a perceptual underpinning of legitimacy as public trust. For example, although the first category “The Nature of Per-

sons: Good or Bad” might seem directly resolvable through tests of Kantian imperatives, Frederickson raised the intervening problem of *context* related to either societal or organizational cultures as eclipsing Kant’s imperatives. In terms of the second category, “Making Ethical Decisions: Doing Right or Wrong,” he borrowed from Herbert Simon to propose a “bounded ethics” wherein the public administrator’s moral authority to make ethical decisions is hemmed in by any number of legislative and budgetary constraints. Interpreting that decision-making quandary as a question of accountability, Frederickson introduced a third category, “Democracy and Ethics: The Issue of Accountability,” which pits the perceived need to exact accountability as a bureaucratic control against the ethical warrant to “take responsibility” proactively or claim extensive bureaucratic discretion to foster ethical governance in a democracy. Fourth, Frederickson opened Pandora’s box to deal with the big questions related to “Policy Ethics and Politics” as distinct from the (more?) “petty ethics” of government corruption (253–254). Here, he mused as to whether and to what extent appointed public administrators bear responsibility for “big” policy questions as distinct from legislators, elected executives, and jurists formally involved in policy processes. In each of these four discussions, Frederickson traced the contours of the government ethics dialogue that reflects creative tensions in the dialectic between the obvious and forthright (“knowing the difference between right and wrong”) and the more complicated relationship between legitimacy and perception.

Frederickson’s examination of the fifth theoretical category, “Methodology and Knowledge in Public Administration Ethics,” encountered a fundamental dilemma that accompanies the dialectic between forthright legalism and perceived legitimacy. Clearly, knowledge about laws, rules, controls, and other interventions is amenable to

the primary and dominant approach to the study of public administration [, which] is positivist, rational, and empirical . . . To the rationalist, reason alone can provide the knowledge of the existence and nature of theory. Rationality is also used to describe the view that reality is a unified, coherent, and explicable system. (255)

He then differentiated among particular positivist methodologies (survey research, interviews, use of secondary data, case studies, and experiments) that researchers followed in their chapter contributions for the 1993 volume.

Then Frederickson turned to alternative, post-positivist thought that challenges the “presumed objectivity of the positive-empirical-rational school,” which asserts that “social structures such as laws, rules, organizations, and governments ‘do not exist independent of human consciousness’ . . . To the

post-positivist analysis *is* interpretation, not an objective interpretation of the facts” (256–257, quoting Harmon and Mayer 1986, 287; emphasis theirs). After citing two chapter contributions that approached post-positivist analysis, Frederickson argued that such interpretation provides a clearer lens for observing actual behavior. Often, assessments of legitimacy (as anchors for “public standards and expectations”) straddle the divide between the two research orientations; on the one hand, positivist methods for measuring public opinion are available on the presumption that expectations (placed upon governments and political systems) are relatively convergent and constant rather than dynamic “moving targets” (see Jos 1993, 362).

On the other hand, Philip Jos (whom Frederickson quoted in the 1993 “Introduction”) raised still another dilemma that arises in examining expectations (in particular, expectations about the nature and severity of corruption) that are by nature dynamic. In this regard, Jos illustrates this movement by explaining the essence of nonlegal corruption as follows:

Once the notion of a public sphere and public offices gains a foothold in society, these offices can be corrupted in ways that may or may not violate the law. This is so because these offices and the people who serve in these offices, because they are public offices and public officials, become part of a dynamic political process that generates new standards and expectations. These offices become linked to larger processes and goals in a way that generates new demands. (364)

In this 1993 essay, Jos appears to have been prophetic in suggesting that “legal corruption” could ultimately prove more destructive than outright bribery (363). As political theorist Michael Sandel points out in *What Money Can't Buy*, influence peddling and similar legal activities constitute corruption as processes that lead to the degradation of government institutions:

We often associate corruption with ill-gotten gains. But corruption refers to more than bribes and illicit payments. To corrupt a good or social process is to degrade it, to treat it according to a lower mode of valuation than is appropriate to it. (2012, 34)

By implication Jos recommended that researchers direct attention to specific contexts, just as Frederickson did in discussions of the first four theoretical categories concerning the nature of persons, making ethical decisions, exercising discretion, and attending to the big policy questions. Thus, the cumulative effects of interrelated dialectics (of legality versus expectations, observation of facts versus interpretation, and dynamic—or perhaps less than

stable—expectations versus durable norms) implied that knowledge acquisition through public ethics research could indeed be messy. All the while, the ethics conversation had become fertile and robust.

Although the second of the three volume, *Ethics and Public Management* (2005), moved Frederickson's concern for *context* forward, it reached out as well to capture conversation within the academy about what administrative ethics are or should be in relation to societal issues. The identity conversation about administrative ethics as reflected through scholarly research had been aptly characterized in Terry Cooper's commentary "Big Questions in Administrative Ethics: A Need for Focused, Collaborative Effort" (2004), which presented the crux of the issue as follows:

More than a passing fad, administrative ethics has demonstrated its sustainability and its centrality to the field. What is lacking with respect to these developments is anything like a focused effort by groups of scholars to study specific sets of significant research questions in a sustained and systematic fashion . . . Not intended to preclude or exclude other work on other questions, the call here is for the establishment of a center of gravity for the development of administrative ethics around some focused collaborative efforts. Diversity of interests articulated by many from various areas in public administration are needed to keep the field fresh and lively; focused efforts of those mainly committed to studying administrative ethics may be required to provide sustainability, coherence, and sufficient weight to advance it solidly into the core of public administration. (395)

Cooper then extended the conversation by proposing four questions that might lend coherence to public ethics research:

1. What are the normative foundations for public administrative ethics?
2. How do American administrative ethical norms fit into a global context?
3. How can organizations be designed to be supportive of ethical conduct?
4. When should we treat people equally in order to treat them fairly, and when should we treat them unequally? (404)

*Ethics and Public Management* (Frederickson and Ghere 2005) drew upon two of these questions as organizing criteria; five chapter contributions appeared under the volume section "Organization Designs That Support Ethical Behavior" and three under "Administrative Ethics in Global Perspective." It is worth noting that the chapters included in the global perspectives section

corresponded to critical events that had occurred during the previous decade, including global economic activities and controversial trade agreements, the 9/11 terrorist attacks, the Afghanistan and Iraq wars, and the abusive treatment of prisoners at the Abu Ghraib and Guantánamo detention facilities.

But more important, editorial efforts in the 2005 volume were deliberate in assessing whether and how chapter contributions related to Cooper's focus and coherence criteria (in the "Introduction") and to the overall comportment of "Administrative Ethics in the Twenty-First Century" (in the "Conclusion").

Notwithstanding its attentiveness to research focus and coherence, the 2005 volume did, at least implicitly, address the public ethics–legitimacy conundrum in chapter contributions that focused on (1) the legitimacy of appropriately used executive power, (2) the variation of moral agency in thick and thin accountability environments, (3) the questionable legitimacy of the private-sector-oriented new managerialism, and (4) blind spots in adjudicating responsibility in public-private partnerships. If *Ethics in Public Management* (in reference to the 1993 volume) amounted to old wine in new bottles, it is hard to decipher whether the "old" or "new" is desirable to which particular stakeholders (and why) in conversations about public ethics. We might speculate that administrative practitioners, along with some in the academy, expect lineages of theoretical continuity accompanied by innovative strategies that elicit efficacious behavior; if this is the case, commentaries about dilemmas and dialectics do little to satisfy those expectations. That said, a number of critical events have occurred since *Ethics in Public Management* was published in 2005 that in some manner reflect alarming levels of political discontent, polarization, and mistrust that diminish governmental legitimacy. Consider, for example, the following events:

- the 2008 financial crises in the United States that led to provocative federal assistance to major financial institutions and auto makers;
- ongoing political accusations charging that governmental agencies (such as the U.S. Environmental Protection Agency and the National Oceanic and Atmospheric Administration) have fabricated climate change narratives;
- the U.S. Supreme Court's 2010 landmark decision, *Citizens United v. Federal Election Commission*, that prohibited governmental restrictions on political expenditures by corporations and employee unions as encumbering First Amendment "free speech" rights;
- an ideological schism in the U.S. Congress, so dysfunctional as to thwart vital legislation for federal debt and spending limits in 2011, resulting in a downgrade of the nation's credit rating;

- the 112th U.S. Congress (2011–2012) having passed the fewest number of bills in forty years (and less than one-third of those passed by the 111th), some members placing a higher priority on paring back the federal government than on making the nation's laws.

As was the case with the events highlighted in the 2005 volume, these recent developments as well affect expectations about public roles and responsibilities as profound challenges to the essence of government legitimacy or at least to traditional logics of legitimate governmental actions. The stridency and shrillness of these legitimacy challenges have become commonplace in the rhetoric of congressional figures. Consider, for example, how various representatives of the majority party of the House of Representatives have excoriated the Independent Payment Advisory Board, an appointed panel created through health-care reform legislation to review Medicare costs, as “a centralized board of bureaucrats to control how health care is allocated” (Cantor, Virginia); “an egregious violation of privacy and patient rights” (Gingrey, Georgia); and “15 unelected, unaccountable, bureaucrats who are there for one and only one reason and that is to ration health care to our seniors and engage in price controls” (Hensarling, Texas) (*USA Today* 2012). Such rhetoric speaks convincingly of a highly toxic political culture, which government scholars Thomas Mann and Norman Ornstein—respectively from prestigious center-left and center-right policy institutions—appraise as follows in their recent book *It's Even Worse Than It Looks*:

Trashing others, undermining their very legitimacy, and lying openly and repeatedly about individuals and institutions now bring no viable penalty or public obloquy. In fact, it can mean fame and fortune. Changing the country's poisonous political culture, which has metastasized beyond the political area, requires first an effort to restore some semblance of public shame. (2012, 180)

Efforts that put partisan ideology above national problem-solving and hold institutions hostage (3–30) constitute direct assaults on government legitimacy. In the words of a party leader in the Senate, “I think that some of our members may have thought the [financial] default issue was a hostage you might take a chance at shooting. Most of us didn't think that. *What we did learn is this—it's a hostage worth ransoming*” (25; emphasis in original).

Reacting to Mann and Ornstein's book, Paul Volcker (former Federal Reserve Board Chairman) comments, “More than anytime in my lifetime, the United States is challenged at home and so our place in the world. When Thomas Mann and Norman Ornstein get together to sound a loud alarm about



the way our system is being torn apart, it's time to listen—and listen hard . . . We better get to work” (Mann and Ornstein 2012, back cover). Presuming that competent public professionals will shoulder much of this work, an appropriate syllogism linking fragmented legitimacy, ethics, and public service *now* casts the public administrator as part of the solution rather than the problem (in stark contrast to the syllogism of the 1990s above):

1. Broken *political* institutions in the United States are currently undermining government legitimacy.
2. Perceptions of broken politics delegitimize *administrative* institutions nonetheless.
3. Therefore, public sector professionals can help regain legitimacy by *doing ethics*.

Put another way, it is now time to extend ethics conversations both in the academy and the professional community in such ways as to situate traditional concerns for designs and controls, corruption as illegal activity, global ethics as consistent with U.S. reforms, and others into broader scale in reference to the problem of legitimacy, which is fundamental to virtually all governing systems. These extended conversations should center upon the ethical competence of professionals (see Bowman, West, and Beck 2010) needed to function effectively in, and improve, the public arena as much as or more than upon strategies to rein those professionals in.

Deteriorated legitimacy calls upon committed public servants to become all the more reliant on moral qualities such as those commended by Stephen Bailey: “optimism, courage, and fairness tempered by charity” (1965, 286). Moreover, those ethical agents are well advised to condition their mental attitudes to remain “pliable” by recognizing that

men and measures . . . are morally ambiguous. Even if this were not a basic truth about the human condition, however, moral judgments in the public service would be made difficult by the shifting sands of context. An awareness of the contextual conditions which affect the arranging of moral priorities is an essential mental attitude for the moral public servant.

(Bailey 1965, 289)

If the current political landscape is one of legitimacy at bay, it might again be asked—as in the Volcker Commission Report—what this means for ethical professionals in public service and for subsequent research that might support them. Applying Stephen Bailey’s perspective, we would focus on how in this current situation “public service [can be] consistent enough to

deserve respect from others (and oneself) and pliable enough to accomplish ethical objectives” (quoted in Bowman, West, and Beck 2010, 92). In this regard, it appears important to direct as much attention to what ethics *do* or *can do* for the professional as to what ethics *are* or *can be* as a unified body of theory and research. And if the spirit of public administration is ultimately contingent on the courage (or more crudely stated, the guts) of the committed, dialogue could turn to what it means to build ethical competency such that consummate professionals can *do democracy* under trying circumstances. In this respect, Bowman, West, and Beck elaborate upon the necessity to build ethical competence as follows:

Ethics is a system that determines right or wrong in society and provides a means by which individuals can behave accordingly. It is a quest for, and understanding of, the “good life.” Ethics, therefore, is not primarily about staying out of trouble; it is about creating strength in individuals and organizations. (2010, 73, 75)

Such an expanded conversation coaxes out questions that relate to three particular issues. First, following Bailey, questions surface as to exactly what measures of continuity and pliability are required of public servants committed to act boldly in a contentious, polarized public arena. Second, conversations of ethical competence invite inquiry about component aptitudes and abilities such as those that Bowman, West, and Beck (2010) consider: values management, moral reasoning, and individual morality, versus public morality and organizational ethics. Third, it is appropriate to direct the conversation back to the problem of theoretical focus and coherence, this time with a particular sensitivity for how the current scope of research (as unified as it may be) supports administrative leadership among strident challenges to political legitimacy.

### **Consistency, Pliability, and Ethical Competence as Related to Legitimacy**

Each of the fourteen chapter contributions to follow falls under one of five topical themes; it is worth noting how three of these section titles vary from those in the 1993 and 2005 volumes. Borrowed from terminology in Chapter 4 (O’Kelly and Dubnick), the first theme, “The Moral Architecture of Organizations,” extends conversation about *organization designs that support ethical behavior* (used in 2005) so as to direct attention to the underlying institutional norms that account for overt practices and regulations. The second theme, “Reassessing Corruption in the Twenty-First Century,” carries

Frederickson's (1993) theme *the problem—understanding public corruption* forward to include the phenomena of *legal* (along with illegal) corruption, particularly those that degrade public institutions and public life. A third section heading, "Individual Volition in Public Institutions," subsumes a wide range of individual behaviors and actions (some ethically commendable and others not) from a variety of rational, political, and psychological perspectives. A fourth topic, "Ethics in Nonprofit Organizations," acknowledges the reality of what Paul Light calls the *new public service*, implying that we have witnessed "the end of the government-centered public service and the rise of a multi-sectored service to replace it" (1999, 1). Finally, the last theme, "Ethical Issues in Global Contexts," parallels *administrative ethics in global perspective* (in the 2005 volume) in depicting international efforts to improve government ethics; nonetheless, it includes concern for the normative character of global organizations as well.

To varying degrees, the chapter contributions in each of the five topical sections deal with Bailey's (1965) emphases upon *consistency and pliability* and *ethical competence* (as outlined in Bowman, West, and Beck 2010) as related to the problematic nature of system legitimacy. For example, in Part I: The Moral Architecture of Organizations, Carole Jurkiewicz's account of ethically dysfunctional organizations focuses upon legitimacy as reflected through reputation, a crucial asset that determines the degree of trust placed in the organization. That reputation depends on the ethical competence of the leader with regard to how efficacious behavior is modeled, policies are articulated, and organizational meanings are shared. Jurkiewicz demonstrates how dysfunctional leadership and cultures inhibit responsible and responsive actions.

In a case study that compares cultural contexts in Israel and Canada, Robert Schwartz demonstrates how in-culture and in-group loyalties reflect "thick ethics" that undermine legitimacy associated with universal moral standards of public governance. Schwartz argues that, in order for public administrators to become ethically competent and pliable, they need to recognize and work through the often-emerging dialectic between concern for close ethical relationships and detached moral standards. He asserts, "It is time for public administration to stop putting its head in the sand about conflicting moral pulls and ethical pushes faced by many public officials." Schwartz's chapter draws upon Ciarán O'Kelly and Melvin Dubnick's interest in "thick" versus "thin" accountability (as developed in their contribution to the 2005 volume) that carries over to their chapter "Power and the Ethics of Reform" herein. O'Kelly and Dubnick focus on the interplay between a *moral tradition* of administrative ethics (i.e., the "application of moral principles to conduct . . .") and an *instrumental tradition* (i.e., attention to the functionality and role of ethics in adapting to particular contexts in efforts to control and coordinate)

in order to probe legitimacy questions about *power manifested through ethics*. For these authors, the individual is inherently *fungible*, “subject to the power articulated as moral knowledge” conveyed through an “appropriate” administrative ethics in sync with organization control, rather than proactively *pliable* (Bailey’s [1965] desired attribute).

To reiterate, Part II: Reassessing Corruption in the Twenty-First Century embraces the proposition that perfectly legal forces and actions that degrade the quality of public life, civic dialogue, and institutions amount to corruption as corrosive to political legitimacy as (or perhaps even more corrosive than) patently illegal abuses of power and misappropriations of funds. In this section, George Frederickson calls attention to the legitimacy of “publicness” in the forms of citizen engagement and grassroots participation emerging globally as part of the new public service. In regard to the virtue of consistency, he expresses concern as to whether the traditional public administration canon (or basic set of rules) will carry over to this new public service of contracted-out governance and quasi-governmental entities. In terms of teaching ethical competence, Frederickson is impartial as to the pedagogical approach followed so long as students of public affairs engage in learning (however directed) that inculcates fundamental public values to be applied in various public arenas, whether “new” or “old.” Relating to the trepidations of contracted-out governance, Frank Anechiarico and Gjalte de Graaf examine entangled conundrums—some constituting illegal corruption and others that are legal but toxic in relation to the public trust—concerning military contingency contracting in Afghanistan and Iraq. In their comparative case study of U.S. and Dutch contracting behaviors, these scholars undertake analysis that encounters fundamental legitimacy questions that “reveal an expanding gray-area, between public and private, between sovereign identity and private prerogative, in which public ethics and civic values are largely absent. The result is a free-floating zone of uncertainty, where the ever-larger disbursement of public funds is met with increasingly inadequate regulation and assessment.” In stark contrast to Bailey’s interpretation of pliability as an ethical virtue, government “flexibility” in these contracting contexts (such as the leeway to subcontract with a brothel service) amounts to a recipe for corruption.

Although it might appear odd to include Patrick Dobel’s chapter on collegiate athletic amateurism in a section devoted to public corruption, there is reason to associate the degradation of the amateur-athlete ideal—and the communal life surrounding college sports—with the forces of commercialization that crowd out the public good and that drive officials in universities and related organizations toward corrupt practices. Regarding ethical competence and pliability, Dobel concludes that these officials should take the initiative to

“do ethics” by rethinking the nature of amateurism (and recalibrating rules) by factoring in the current-day realities of student life and the various (in some cases, hidden) costs incurred in simultaneous pursuits of athletic excellence and academic success.

Part III: Individual Volition in Public Institutions situates Frederickson’s (1993) concerns for *the nature of persons: good or bad* and *making ethical decisions: doing right or wrong* in a more expansive range of inquiries that probe individual behavior and discretion. James Bowman and Jonathan West propose a psychological approach to individual decision-making as an alternative to more philosophical, rule-based orientations reflected in traditional expectations of legitimate government. These authors encourage moral actors to rely on a psychological model that triangulates among results of an action (consequentialism or teleology), pertinent rules (duty ethics or deontology), and personal integrity or character (virtue ethics) to resolve ethics conundrums. Bowman and West argue that this technique “enables the management of ethical ambiguity and provides help in making the inevitable compromises. When choices are guided by benevolence, creativity, and an ethic of compromise—a moral tenet of democracy—there is at least the satisfaction that the problem has been fully examined and that the decision can be rationally defended.” Such moral reasoning lays the groundwork for ethical competence that “responds to the complexity of the human condition.” In a related chapter that homes in on varying interpretations of *conflict of interest*, Andrew Stark demonstrates how both psychological and political understandings of conflict and of interest have changed over time. Although Stark does not address questions of political legitimacy per se, it could be said that his findings implicitly characterize legitimacy in flux—such that competent professionals need to recognize and negotiate the multiple meanings and expectations attached to even the most basic of ethical standards in government.

In her provocative chapter on *guerrilla government*, Rosemary O’Leary in essence questions the efficacy of some individual motives to “do good” in public bureaucracies in spite of perceived institutional barriers to doing so. Can personal passion, zeal, and outrage be reconciled with legitimate operations in government agencies, or are they in fact the primary ingredients of ethics abuse? O’Leary’s guerrillas are clearly *pliable* in that “they are not afraid to reach into new territory and often seek to drag the rest of the system with them to explore new possibilities.” Yet presumably, that courage needs to be leavened by an ethical competency that discerns between personal and public moralities (see Bowman, West, and Beck 2010, 84–85).

Raymond Cox and Sucheta Pyakuryal introduce readers to the emerging field of knowledge management and its potential for understanding the

legitimate uses of discretionary judgment. Duly noting the *political* in “political legitimacy,” these scholars wonder if public administration education programs that disparage politics in effect undermine legitimacy rather than affirm it. But more to their point, they argue that within public organization, corruption is *learned behavior* that inhibits the use of discretion in making the hard calls to say “no” (as well as “yes”), particularly when dealing with equity considerations. Drawing on knowledge management ideas, Cox and Pyakuryal recognize that *tacit knowledge*—that absorbed and embedded through experience—is vital to an ethical competence that approaches what Max Weber understood as becoming “a mature [person]” with a future orientation (1946, 128).

Parts IV and V deal with ethics concerns relating to increasingly visible governance arenas that fall outside the U.S. governmental sector—respectively, nonprofit entities and global organizations. In Part IV: Ethics in Nonprofit Organizations, Guy Adams and Danny Balfour focus on macrolevel legitimacy problems that government, business, and nonprofit sectors confront in an era of hypermodernity. Adams and Balfour speak to the particular problem of external legitimacy in asserting that U.S. political institutions are viewed by others around the globe as “a system of government that allowed Wall Street to write self-serving rules, which put at risk the entire global economy . . . They [those of other societies] see, in short, a fundamental problem of political accountability in the American system of democracy.” For Adams and Balfour, restoring legitimacy requires an ethic of social responsibility (rather than compliance) that fulfills obligations to diverse stakeholders broadly construed.

By contrast, Kevin Kearns concentrates on local-level nonprofit organizations (NPOs) that are typically involved in fierce competition for donor funding. For these organizations, legitimacy depends upon the ability to demonstrate the use of business management processes; such pressures push NPOs toward “a more commercial approach to management and service delivery” and away from community-based missions. (In comparing these two chapters, it is hard to miss the irony that the institutional processes that legitimize NPOs in the United States are much the same bureaucratic forces that other societies around the world see as “stultifying and suspect.”) Kearns maintains that nonprofit organizations can counterbalance these imposed market pressures by attending to civic activism and juggling a variety of commendable value orientations (or impulses) such as volunteerism, professionalism, and civic activism in addition to commercialization.

In Part V: Ethical Issues in Global Contexts, Diane Yoder and Terry Cooper update previous studies of emerging standards and regional efforts to establish common ethics frameworks by now focusing on such

initiatives in northern and sub-Saharan African countries. Generally, these attempts to embed integrated frameworks that support transparency and democratic processes are yet at an awareness-raising stage of normative development, anticipating a time when those values can be institutionalized as enforcement mechanisms. Implicitly, Yoder and Cooper's contribution addresses legitimacy questions related to a dialectic between a strong culture of communal harmony (through the traditional values of *ubuntu* and *seriti*) and the current context of destabilizing forces attributable to global economic malaise, government downsizing, and foreign initiatives to extract natural resources from the continent. In his study of global (i.e., development, humanitarian, human rights, and regulatory) organizations, Richard Ghere examines how leaders rely upon manipulative rhetoric to establish and maintain legitimacy (or claim "the moral high ground") in exerting policy power in international discourse communities. Since most if not all rhetoric is manipulative (i.e., persuasive) by nature, ethical competence calls for the speaker to abide by particular fairness guidelines that govern how messages are conveyed to global audiences.

### **Institutional Themes and Theoretical Coherence**

Substantive commonalities among the various chapter contributions described above coax out a few institutional themes that pertain to norms and ethics in public organizations—for example:

1. The boundedness of ethics, particularly in ambiguous contexts;
2. The power forces around (and within) institutional legitimacy—and their exploitative potential;
3. The value of institutional learning and understanding;
4. Moral personhood and prudent judgment for ethical discernment.

This section tracks each of these themes to the four questions Terry Cooper (2004) proposed for lending theoretical coherence to public ethics research—relating to (1) normative foundations, (2) American administrative norms in global contexts, (3) organization designs to support ethics, and (4) the treatment of equals and unequals. What follows offers some indication of whether emphases on institutional legitimacy in the study of ethics align with or diverge from current trends in public ethics theory and research.

First in the 1993 volume, George Frederickson clarified boundedness of ethics as follows: "In bounded ethics the administrator functions within the limits of enabling legislation, with limited budgets, usually advocating or at least supporting the purposes of the agency. Fundamental questioning of



the purposes and practices of the agency, on the basis of issues of morality, is seldom found and rarely encouraged" (249). This particular theme relates directly to Cooper's "big question" about the *normative foundations of public administration ethics*, but the alternative foundations he identifies would lead to starkly different opinions on the appropriateness of these constraints. On the one hand, most interpretations of *regime values* (see Rohr 1989) as a legitimate foundation would duly align this boundedness with constitutional theory. Clearly, this standard would castigate the escapades of government guerrillas (O'Leary, Chapter 10) as egregiously unethical. On the other, those who advance *virtue* as the foundation of ethical obligation would argue that boundedness merely reflects a professional (ethics) agenda to reduce the scope of one's personal morality. Cooper quotes one such virtue philosopher, Edmund Pincoffs, as follows: "It is our daily business to assess, to appraise, to judge persons. It is a task so important and central in life that it takes on a life of its own" (in Cooper 2004, 398). Thus, Pincoffs would likely applaud Dobel's conclusion (in Chapter 7) that universities and related organizations (particularly the NCAA) need to take the initiative to rework the amateur-athlete ideal—certainly in reaction to the increasing boundedness of commercialism and market power in U.S. society (Frederickson in Chapter 5; Kearns in Chapter 13).

Ethical boundedness relates as well to Cooper's third question about *how organizations can be designed to support ethical conduct*. Here the institutional nature of this boundedness issue frustrates some ethics reformers intent on imposing instrumental designs (see O'Kelly and Dubnick in Chapter 4) since dysfunctional behavior is often learned from culture inside and beyond the organization (Jurkiewicz in Chapter 2; Cox and Pyakuryal in Chapter 11). In essence, ethics reformers would do well to acknowledge the ethical boundedness of the individual psyche as it relates to various interpretations of appropriateness and honesty (Bowman and West in Chapter 8; Stark in Chapter 9).

Second, the institutional dialectics related to raw power and exploitation resonate through each of Cooper's four big questions. Again, a normative foundation steeped in *virtue* would obligate one to "build strong ethics cultures in organizations" and "sustainable, responsible social institutions" in the face of power (Adams and Balfour in Chapter 12). But the question of power concerning the viability of *American global values in global contexts* becomes dicey regarding (1) the dominance of market ideology embedded within "global governance values" that some global organizations impose on developing societies (Ghere in Chapter 15), (2) the disruptive effects of such "universal" moral standards on ethical bonds of relationship within particular cultural traditions (Schwartz in Chapter 3), and (3) the differences of rules



and expectations between nations involved in parallel efforts such as military contracting (Anechiarico and de Graaf in Chapter 6). Ethics reformers intending to *redesign organizations* “to do good” should expect their efforts either to reinforce or rearrange power—in other words, “[understanding] ethics [is understanding] the enforcement of power through ethics” (O’Kelly and Dubnick in Chapter 4). Finally with regard to *equals and unequals*, those who wield raw power can exacerbate inequalities between rich and poor nations in the context of international development (Ghere in Chapter 15), commercial entities profiting from college sports and student-athletes (Dobel in Chapter 7), and market-savvy nonprofit organizations and vulnerable populations in local communities (Kearns in Chapter 13).

Third, the value of institutional learning relates back to Chris Argyris’s distinction between *single-* and *double-loop* learning that adds clarity to what organization learning means: “Double-loop learning occurs when errors are corrected by changing the governing values and then the actions” (2002, 206). It therefore occurs in a questioning (rather than defensive) atmosphere in which all participants (including leaders) “say what they know yet fear to say” and advocate their ideas “in a way that invites inquiry into them” (217)—in this case, regarding how espoused norms relate to how systems and processes actually work. Again, emphases on institutional (or double-loop organizational) learning add texture to each of Cooper’s four big questions. Institutional knowledge supports the *foundational* virtue of mature judgment directed toward an ethos of democracy (Cox and Pyakuryal in Chapter 11) that is often seasoned by the ability to synthesize differing perspectives (Bowman and West in Chapter 8)—for example in terms of *ethics in a global context*, what humanitarian leadership entails in the midst of armed conflict (Ghere in Chapter 15).

Fourth, the theme of *moral personhood through judgment*—at least as it was characterized by Weber, “Here I stand: I can do no other” (1946, 128, quoted in Cox and Pyakuryal in Chapter 11)—raises some vexing questions related to *normative foundations* in general and regime values in particular. Such could be the proclamation of a government guerrilla (O’Leary in Chapter 10), provided the subversive action in question was predicated on seasoned judgment. As both a virtue and an area of ethical competence, judgment based on institutional knowledge prepares one to negotiate the tough value terrain where *organization designs*, protocols, and best practices do not suffice, particularly where decisions deal with the treatment of *equals and unequals* (Cox and Pyakuryal in Chapter 11).

So does an understanding of public ethics centered upon system legitimacy lie within the existing stream of theory and research, or does it charge off in other directions? Even though numerous commonalities can be found

(as indicated above) between the institutional themes outlined here and core theoretical questions (such as Cooper's), the question nonetheless appears difficult to answer—at least at the beginning of this volume. What possibly nags at practitioners and scholars alike may well be the sometimes faint but often-present dialectical character that an institutional perspective brings to public ethics in particular and public administration in general. The conclusion (Chapter 16) of this volume first demonstrates how competent administrators *do ethics* in ways that respond effectively to institutional problems in their midst; second, it revisits concern about how particular sensitivities toward legitimacy affect theoretical coherence in public ethics research.

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# Part I

## The Moral Architecture of Organizations

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## The Anatomy of Ethical Dysfunction

*Carole L. Jurkiewicz*

If one could assess the ethical dysfunctionality of an organization from first glance, or even after several glances, public sector effectiveness and efficiency would increase dramatically. It is doubtful anyone other than those whose behavior would be called into question by such openness would argue with the advantages both to the institution and to the public that such insight would reveal. Where best to expend public funds, whom to trust to develop and execute policy, assurance of legal operations, and maximizing public good are a few of the obvious benefits that would accrue from a more transparent picture of an organization's ethicality. Certainly stemming the growing deterioration of trust in government (Pew Research Center 2010) and organizations in general (Chua and Rahman 2011) would be an overriding positive outcome. Yet we know that recognizing unethicity as systemic rather than episodic requires an in-depth familiarity with an organization's functions and structure, informed insight into its patterns of operations, and an overview of its policies and procedures. It is a process of observation and investigation that is increasingly more difficult as organizations become more complex (Mikkelsen and Einarsen 2001; Vega and Comer 2005) and individuals more skillful at covering up their ethical transgressions (Giacalone, Jurkiewicz, and Knouse 2012; Jurkiewicz and Grossman 2012).

Unethical behavior in organizations has, by all accounts, become more prevalent and arguably more damaging to individuals and to society (e.g., Chua and Rahman 2011; Giacalone, Jurkiewicz, and Knouse 2012; Jurkiewicz 2012). Research indicates that the negative impact on organizations ranges from higher health-care costs, greater levels of turnover, and difficulty

recruiting the most talented employees (Promislo, Giacalone, and Jurkiewicz 2012) to severe financial impacts (Eaton and Fabrikant 2001; Johnson 2006; Orlitzky, Schmidt, and Rynes 2003), societal economic decline (Aguilera and Vadera 2008; see also Argandona 2003; Blackburn and Forgues-Puccio 2010; Lindgreen 2004; Matsumura and Shin 2005; Zahra, Priem, and Rasheed 2005), constrained economic development (e.g., Blackburn, Bose, and Haque 2006), and environmental disasters (e.g., Barker 2011; Cole 2007; Kurzman 1987; Patel 2010). In fact, the World Bank, based upon longitudinal studies, has determined that the greatest deterrent to economic and social development globally is organizational unethicity (Aguilera and Vadera 2008; see also Argandona 2003; Blackburn and Forgues-Puccio 2010; Lindgreen 2004; Matsumura and Shin 2005; Zahra, Priem, and Rasheed 2005). While short-term unethical behavior in organizations has been shown to confer advantage (e.g., Rose-Ackerman 1999), long-term unethicity at the minimum reduces the competitive advantage of organizations in all sectors (Jurkiewicz and Morozov 2012). Ample evidence suggests that unethical behavior has a contagion factor as well, spreading to other organizations within the same geographic area (Bardhan 2006) and also facilitating lapses in judicial oversight (Cordis 2009).

Consequences to the individual who is employed by an ethically dysfunctional organization have been widely substantiated (see Promislo, Giacalone, and Jurkiewicz 2012). They include, at the broader level, a lack of recourse within the system that creates the problem, lack of rewards for effort expended, dehumanization, psychological and social alienation, false charges and accusations, and lack of self-esteem, all resulting in depressed motivation and increased negative health factors (Moore, Grunberg, and Greenberg 2004; Promislo, Giacalone, and Jurkiewicz 2012). At the microlevel, the consequences of dysfunctionality to the individual include psychological and physical stress (Arzi, Solomon, and Dekel 2000; Mikkelsen and Einarsen 2001; Niedl 1996; Quine 1999; Zapf, Knorz, and Kulla 1996); insomnia (Elovainio et al. 2003; Thomas et al. 2006); increased likelihood of violence (Lorho and Hilp 2001; Tepper et al. 2006); whistle-blowing (Jurkiewicz 2012); employee theft (Greenberg 2002); higher incidence of unhealthy behaviors (Hemingway and Marmot 1999; Kaprio et al. 2000) and substance abuse (Greenwood, Holland, and Choong 2006; Landrine and Klonoff 1996; Stewart 1996); depression (Schneider, Hitlan, and Radhakrishnan 2000; Sheridan 2006); suicide (Promislo, Giacalone, and Jurkiewicz 2012); post-traumatic stress disorder (Bowling and Beehr 2006; Leymann and Gustafsson 1996; Mikkelsen and Einarsen 2002; Schneider, Swan, and Fitzgerald 1997; Tehrani 2004); and mortality (Adler et al. 1994; Geronimus 1992; Jackson, Kubzansky, and Wright 2006; Promislo, Giacalone, and Jurkiewicz 2012). There are no discoverable

data that suggest organizational dysfunction is of benefit to the individual, organization, or society.

While no formula for assessing organizational ethicality *a priori* has been nor realistically will be established, a careful review of the literature suggests a set of indicators that can be employed to ascertain, with some degree of certainty, whether an organization is or is not ethically dysfunctional (use of the term *dysfunction* here implies ethical dysfunction). This chapter will present and organize this data in a fashion intended to be a tool for organizational analysis, for use by both the scholar and the practitioner. Clustered into the three organizational elements most prevalent in the literature—structure, culture, and leadership—the study concludes with a checklist for determining whether or not the organization has an anatomy of ethical dysfunction.

### **Structural Dysfunction**

How organizational functions are formally divided, grouped, and coordinated determines in large part the motivation and interactions of those who perform these tasks, and ultimately the ethicality or dysfunctionality of the organization. A key element of organizational dysfunction is the existence of a strict vertical hierarchy that effectively limits communication and offers little to no recourse for employees to circumvent the authoritative reporting relationship in the event of top-down unethicity (Jurkiewicz and Grossman 2012). A closed system, where alternative opinions are discouraged, is common in such a strict hierarchical system and, perpetuated by the reluctance to change, establishes a tradition that fosters dysfunctionality. Also characteristic of this structure is that it does not facilitate interdepartmental cooperation toward common goals and effectively creates barriers to effective sharing of information and open communication (Kaptein and Van Dalen 2000). Organizations in increasingly complex environments that do not shift their structure toward more dynamic configurations and more integrative elements can anticipate greater levels of ethical dysfunctionality (Camps and Majocchi 2010; Johnson, Martin, and Saini 2011; Kaptein 2011; Vaughan 1999).

Exercising control over employee behavior is important for collective goal achievement, yet with no checks or control systems, dysfunctionality can proliferate. Large organizations, such as bureaucracies, tend to have high rates of dysfunction because they are difficult to oversee (Goel and Nelson 2010; McKendall and Wagner 1997) and their size makes it easier for the wrongdoer to sidestep control mechanisms. Research has established that an absence of evenly enforced transparency programs regarding policies, procedures, and performance measures is one of the most often cited elements that contribute to organizational dysfunction (Jurkiewicz 2012; Jurkiewicz



and Grossman 2012). Further problems have been noted for organizations in which the functional responsibilities of the employees are unclear or, if intentionally disregarded, have no structurally imposed sanctions (Kaptein and Van Dalen 2000). This is also the case if performance expectations are inconsistently expressed in job descriptions, performance appraisals, goal-setting, and reward systems (Mishina et al. 2010). Additionally, unethicity is higher in organizations that hire from and operate in environments where the populace has fewer years of schooling than national norms (Karahana, Razzolini, and Shughart 2006).

An organization's reputation is its most valuable asset as it determines the degree of trust placed in it (Chua and Rahman 2011; Mitnick and Mahon 2007), which in turn affects its ability to function effectively both internally and externally. In fact, if an organization is under reputational strain, such as that caused by resource deficiency, scandal, litigation, or negative public reports, individuals therein are likely to internalize the stress and are more likely to engage in unethical behavior (Greve, Palmer, and Pozner 2010; McKendall and Wagner 1997). Research also demonstrates that when strong social ties exist between individuals employed by two different organizations, and especially if those individuals hold high rank in the hierarchy, there exists a greater likelihood of unethical behavior by both parties (Greve, Palmer, and Pozner 2010), particularly if these social ties are kept private and are intentionally concealed (e.g., Baker and Faulkner 1993); frequently the dysfunction results in the colluding parties sharing the spoils of their exploits (Wiltermuth 2011). Mimetic behavior is another strong factor in predicting organizational dysfunction in that if one organization sees that another is not punished and/or benefits from unethical behavior, the first organization is likely to copy the behavior and act in a similarly unethical manner (Greve, Palmer, and Pozner 2010).

Research has established that unethicity is structurally rooted, expressed by the organization's culture, and enacted through its leadership (Jurkiewicz and Grossman 2012). Of each of these elements, structural variables are the most resistant to change. In order to avert the development of a negative structure or to act to amend one, an organization can stay alert to the factors it knows are potential indicators of ethical dysfunction.

### **Cultural Dysfunction**

Organizational culture, whether positive or negative, develops over time as leaders model behavior, policies are articulated, rewards for behaviors are demonstrated, and the collective activities of organizational members cohere into a system of shared meaning, an organizational personality. Emergent

from this culture is a set of moral precepts, a corpus of moral principles that act as rules to constrain or facilitate ethical behavior among employees (Jurkiewicz and Grossman 2012). Traditions, customs, and implicit rules governing behavior emerge incrementally from this foundation as individuals build on what has led to organizational success in the past. The stronger the culture, the more deeply held the value system, the greater the commitment as well as risk of groupthink, and the more willing employees are to submit to behavioral controls imposed by the organization (Schein 1996), whether they are positive or negative. The literature indicates that certain aspects of an organization's culture have a high propensity to contribute to ethical dysfunction, and an awareness of these offers both a prescriptive and a preventive advantage.

The research overwhelmingly supports the notion that individuals behave in ways for which they are rewarded and that they are more likely to behave in an unethical manner if there is a substantial benefit for doing so (Carson 2003; Grover 1993; Moore and Loewenstein 2004). A key component of an organization's culture, the reward system can be overt, meaning directly observable public incentives, or covert, meaning selective reward and reinforcements. Covert rewards are generally perceived as unjust and lead to differentials in status based upon unknown factors, contests of will and power, and the temptation to engage in ethical misconduct to achieve personal advantage (e.g., Andreoli and Lefkowitz 2009; Vaughan 1999; Wilmot and Hocker 2001). Dysfunctional cultures can directly endorse misconduct (e.g., Ashkanasy, Windsor, and Trevino 2006), pressure goal achievement without providing ethical guidance or emphasizing values (e.g., Dean, Beggs, and Keane 2010; Finney and Lesieur 1982), or pressure goal achievement while communicating a lack of concern for how the goals are attained (e.g., Kulik 2005). A lack of consistently applied consequences in response to unethical behavior becomes embedded in routines and spreads via social learning principles (e.g., Ashforth and Anand 2003; Collins, Uhlenbruck, and Rodriguez 2009), is reinforced by rationalization (Zyglidopoulos 2009), and leads to escalation of the offending behaviors (Fleming and Zyglidopoulos 2008). Unethical behavior that goes unchecked creates new normative precepts and, thus, complicit standards that support unethical behavior (Goel and Nelson 2010; den Nieuwenboer and Kaptein 2008).

Another feature of organizational culture associated with ethical dysfunction is an orientation toward profit that advantages the few over the many, such as preferential salary increases, quid pro quo consulting opportunities, inequitable distribution of unencumbered funds, undue personal influence in the execution of contracts, kickbacks, positioning oneself for a career outside public office while working in that capacity, and using organizational

powers to procure personal influence through proffering favors (Jurkiewicz 2012). While accountability programs are important in deterring unethical behaviors, accountability without consistent consequences for leaders who do not equitably reinforce ethical standards is insufficient to establish a culture of ethicality (DeCremer and van Dijk 2009; Sedikides et al. 2002). As a corollary, research shows that an organizational perspective focused on short-term results at the expense of long-term gains is likely to experience higher levels of unethicality (Johnson et al. 2011), as are those that rationalize unethicality by claiming situational excuses, competitive pressures, and suppressing the identification of the wrongdoer to the lowest levels of accountability.

While ethical codes are common reactions to revelations of wrongdoing, they have not proven effective in deterring ethical dysfunction; if someone wants to engage in unethical behavior, a code does not present a barrier since substantive repercussions for code violations are seldom if ever evoked and most are lifeless documents developed prior to most employees' organizational involvement (Jurkiewicz 2002, 2012). Even the Mafia and gangs abide by codes of conduct they define as ethical (Cummings and Monti 1993; Parker 2007; Schmitz and Christopher 1997; USDOJ 2008, 2009), so the existence of an organizational code does not, *de facto*, confer ethicality on the institution. The most important aspect of having a code of behavior, formalized or not, is that there is ongoing ethics education at all levels of the hierarchy (Jurkiewicz 2012), as well as clear negative consequences for violations of ethical protocols (Kaptein 2011), and that these consequences are consistently enforced (Zoghbi-Manrique-de-Lara 2010); organizations that lack these aspects are more likely to experience ethical dysfunctionality.

The social contract of an organization, expressed through its culture, is the constitution of the organization, one that directs and adjudicates behavior (Chua and Rahman 2011). The act of producing a code of ethics demonstrates implicitly and explicitly that the organization recognizes that its actions are determined by a social contract, and that the espoused values are interpreted by others as a definition of trustworthiness and forces for social betterment or the lack thereof (Shocker and Sethi 1973). Thus, violations of a written code escalate negative public consequences and employee dissatisfaction as the gap between espoused and actual behaviors is accentuated by the transgressions. Organizations would be well advised to consider such outcomes when choosing to develop or edit their codes and to be wary of engaging in mimetic processes whereby they model their code of ethics after organizations' whose reputations are positively accepted by society, in an effort to be viewed as legitimate (DiMaggio and Powell 1983; Scott 1995; Suchman 1995; Sullivan, Haunschild, and Page 2007). If the code does not represent the actual behavior

of the organization, violations will not only lead to ethical dysfunction but will be amplified by the damage to its reputation.

### **Leadership Dysfunction**

The literature indicates certain patterns of leader behavior that contribute to high rates of ethical dysfunction in organizations. An awareness of this pattern allows organizations to select and manage the leadership function toward the end of minimizing unethical behaviors. Leaders exert an immediate and strong influence on the ethicality of their subordinates (Jurkiewicz 2006, 2012; Mulki, Jaramillo, and Locander 2009; Piccolo et al. 2010) and through their behaviors contribute to the culture of the organization by demonstrating through the focus of their attention what is important and what is not, how they respond to crises, what they reward and punish, and who they hire and fire (Sims and Brinkmann 2003). Leaders, by virtue of the high status role they hold, are especially likely to engage in unethical behavior (Galperin, Bennett, and Aquino 2011; Greve, Palmer, and Pozner 2010); this tendency is enhanced in those who operate in high-stress environments (Baumeister and Tieney 2011; Gino et al. 2011).

Individuals possess a powerful aversion to being viewed as unethical by others (Warren and Smith-Crowe 2008) and will go to extraordinary lengths to present themselves as ethical despite acting in direct opposition to their ethical claims (DeCremer and Sedikides 2008; Jordan and Monin 2008; Sims 2009). Most people, given the latitude, will engage in unethical behavior, a phenomenon termed the “pervasive dishonesty of ordinary people” (Shu, Gino, and Bazerman 2011, 344). Individuals do not usually deliberate rationally regarding ethical issues (Butterfield, Trevino, and Weaver 2000; Haidt 2001; Reynolds 2008), and their cognitive limitations forestall their recognizing their own biases (e.g., Moore et al. 2006). Once committed to a course of action, individuals selectively perceive options and evidence to further support their position and ignore objective data that refute the correctness of their actions (e.g., Brockner and Rubin 1985; Tetlock and Lerner 1999). While individuals seek to minimize the cognitive dissonance between their actual behaviors and the public perception of them as ethical individuals (Aquino and Reed 2002), they will continue to exist in a state of ethical disparity if the benefit of acting unethically is high (Carson 2003; Grover 1993; Moore and Loewenstein 2004). To do so, individuals engage in a process of moral disengagement whereby they justify their unethical behavior to themselves and reframe it as morally acceptable (Bandura 1990; Bandura et al. 1996). Individuals most likely to engage in moral disengagement possess four personality characteristics:

lack of moral identity, low empathy, a chance locus of control orientation, and trait cynicism (Shu, Gino, and Bazerman 2011). Individuals exhibiting high levels of moral disengagement are more likely to disregard an organization's ethical code as well. Therefore, accountability standards that have clear and consistently applied consequences are all the more important to organizational functionality.

Leader behaviors that contribute to ethical dysfunctionality have been widely studied. Leaders who fail to share responsibility for the development and perpetuation of congruent positive organizational values through education, through integration of ethics into problem-solving and goal-setting, and through acting in accordance with the espoused organizational value structure (Heugens, Kaptein, and van Oosterhout 2008; Kaptein 2008) have a negative impact on ethicality. Also detrimental are those who establish reward systems for individual behavior over collective outcomes (e.g., Gino and Margolis 2011; Harris and Bromiley 2007; Zhang, Wan, and Jia 2008) and those who leverage legitimate authority for personal benefit (Jurkiewicz 2012). Leaders who selectively overlook unethical follower behavior based upon the positive personal consequences of that behavior for the leader (Hoogervorst, Cremer, and van Dijke 2010) perpetuate dysfunction. Since followers learn from the behavior of the leader rather than simply from the espoused values (Jurkiewicz 2009), the leader, by selectively reinforcing such behaviors either directly or by failing to enforce negative consequences, teaches followers how and when to behave unethically. Followers will behave unethically if they think their behavior will go unpunished (Gino and Pierce 2009; Hoogervorst, Cremer, and van Dijke 2010; Mazar, Amir, and Ariely 2008; Shu, Gino, and Bazerman 2011), particularly if there are time pressures (Shu, Gino, and Bazerman 2011); a leader who is inattentive or unaware of such tendencies can allow dysfunction to proliferate.

Leaders' lack of ethicality is enhanced when the quality of service provided for which they are responsible is not immediately observable; when outcomes are deferred into the longer term, the individual is less concerned with doing things correctly in the moment (Greve, Palmer, and Pozner 2010). Adorno (2000) posits that individuals progressively acquire the ability to detach themselves from the consequences of their behavior, an evolutionary tactic that is learned as necessary for survival and success within the organization. Given that tendency, leaders are in a unique position to implicate others to pay for their mistakes, to diffuse the unethicity. Leaders who deflect responsibility for ethical violations onto the system, disdaining strict definitions of right and wrong, also have been shown to contribute to organizational dysfunction (Jurkiewicz 2012; Jurkiewicz and Massey 1998).

The above discussion of structural dysfunctionality described the foundation of unethicity in organizations, the segment on cultural dysfunction described the habits that form as a result of operating within a specific structure, and the final section on leader dysfunctionality outlined the existent literature on how these organizational elements dictated by the culture are physically enacted. At this point a definition of organizational dysfunctionality presents itself: a strong orientation toward profit motive as evidenced in the redirection of all work activities toward that end, facilitated by manipulating processes, policies, structures, information, and relationships in a manner that maximizes advantage to the few over the many, externalizing the costs and internalizing the benefits. The cultural manifestations of organizational dysfunctionality are identifiable and are presented here as the Unethical Dozen.

The Unethical Dozen, presented in Table 2.1, is a checklist that can be used to measure the level of organizational dysfunctionality. A preponderance of these factors present in an organization establishes a base threshold for dysfunctionality. It is unlikely that an organization would exhibit either extreme of scoring zero or 100 percent. Rather, ethical dysfunction is to be viewed as a continuum, and the factors detailed below the method by which to position the organization along that continuum. The Unethical Dozen provides the basis for practitioners to assess their organizational practices and to understand the extent to which these practices contribute to dysfunctionality or ethicality. It thus offers a strategic tool for planning and assessment at both the organizational and individual levels. For the scholar, this twelve-point checklist offers a foundation for further instrumentation development and the creation of a tool that can be used to assess organizational dysfunctionality as a variable in predicting organizational performance. It is presented as a first step in these endeavors. Table 2.1 presents twelve dimensions of organizational dysfunctionality and the factors that identify the presence or absence, and the prevalence, of the dysfunction. It can be used as both a prescriptive tool and a retroactive deconstruction of ethical violations.

The various ethical dysfunctionality dimensions arrayed in Table 2.1 are evident at the structural, cultural, and leadership levels as each perpetuates the other. The structure shapes the cultural expression of the organization's values; a leader is promoted who articulates and embodies these values; the leader in turn institutes policies and procedures that define the organizational structure. It is an interactionist process, and applying this checklist requires a holistic assessment best achieved by looking at all these organizational aspects. Focusing only on one or two of the three is likely to result in a skewed view of the source of organizational dysfunction and, thus, in a misdirected and ultimately ineffective reform effort.



Table 2.1

**Dimensions of Ethical Dysfunctionality in Organizations**

Ethical dysfunction	Indicators of presence and/or prevalence of dysfunction
Deception	Organizational members' behaviors are often deceptive, expedient, artificial, shallow, and politically manipulative; employees are inconsistent in following a code of conduct; they engage in subterfuge, willful misconceptions, and dupery. These behaviors are likely modeled by the leaders of the organization and replicated through subordinate activities. Deceptive behaviors may be rewarded or at the minimum overlooked or not punished.
Dependency	Subordinates have unusually strong ties to and identification with a leader who exerts ultimate control over them; they develop psychological as well as fiscal dependence on the leader, possess a strong desire to please the leader, and place leader on a pedestal; leaders require obedience and punishes self-determination. These leadership behaviors are frequently defined as charismatic in nature, engendering a zeal and sense of self-sacrifice that reinforces groupthink and a lack of critical analysis.
Distrust	Leaders assume hidden agendas, falsehoods, ulterior motives on behalf of employees as do employees of each other; spying; encouraging and rewarding reporting of colleagues' transgressions; surreptitious observation; no privacy. Employees learn to question the motives and intentions of all with whom they work. An inordinate amount of time is spent assessing the implications of directives as opposed to fulfilling them.
Egoism	Employees are separate and distinct free agents responsible for their own output regardless of others' efforts; time spent interacting with others is dictated by necessity; employees exhibit a reckless disregard for others. Individual accomplishment is sought over effective team behaviors. The focus is on short-term personal gain rather than a collective sense of accomplishment.
Immediacy	Employees are concerned with immediate reward without regard for long-term consequences; seek instantaneous gratification; reward expediency toward goal attainment. The ends justify any means. Leaders manipulate data and spin its interpretation to enhance perceptions of immediate performance. This problem of "immediacy" usually develops in response to reward systems that discount long-term performance in favor of just-in-time performance.
Impiety	Leaders demonstrates disesteem and contempt for employees; uncivil, discourteous to others; apparent lack of respect for the individual; the organization is more important than the members that comprise it. Employees may be bullied, experience harassment, or disparage the performance of others. Departments will engage in competitive behaviors for attention as opposed to production. Cliques develop and exert political influence.

Ethical dysfunction	Indicators of presence and/or prevalence of dysfunction
Impunity	Leaders lack accountability; blame others for wrongdoing, bad outcomes; citing procedural issues for protection or absolution from responsibility; follow the letter but not the spirit of the law, rationalize actions by the ends achieved; character, truth, maintenance of obligations and promises are at the discretion of individual organizational members as predicated by their contribution to goal attainment; assign excusing factors.
Inequality	Leaders are faithless; wrongful or biased in judgments; demonstrate favoritism; intentional disparity in treatment, assignments, rewards, access to power; injustice in settling disputes. Lack of representativeness in the makeup of the workforce as well as disproportionate representation in meetings and across all organizational levels.
Inhumanity	Leaders lack mercy or kindness; cruel; impersonal, cold; unconcerned with the needs of employees as human beings; lacking warmth or geniality. Policies do not emphasize employee value or retention, demonstrates a disrespect for employee health, individual goals, and the need for socialization as part of the job.
Invariance	Leaders enforce one right way to do things; discourage questioning and innovation; punish behavior outside the norm; focus is exclusively on goal attainment as single-minded purpose; need to sanction to enforce ethical conduct. Discourage proactive thinking, creativity, and effective problem-solving.
Narcissism	Both leaders and subordinates display psychological and emotional immaturity; primitive expression of needs and desires; and brutish disregard for those who distract attention from oneself. Exhibits psychic numbing toward others' needs and concerns. Express a need for compliments and praise at the expense of measurable performance outcomes.
Obduracy	Leaders are harsh, inflexible, unyielding; employee feelings have no relevance in the work environment, their happiness and prosperity are their own concern; individuals are renewable resources; perpetuation of the organization over the individual. Gossip is valued as a form of expression, there is a distinct lack of teamwork.

## Conclusion

The research to date on organizational ethicality has primarily focused on those elements that contribute to the improvement of the organization. Presented here is an overview of the literature that illustrates the anatomy of organizational dysfunction, for use both in developing measurement indices and in acting to prevent the development or furtherance of unethicity. It serves as well as a tool to understand and unravel ethical violations that accentuate the need for organizational development and cultural revision. The checklist provided here, rooted in an expansive literature, allows for individual analysis



at the structural, cultural, and leadership levels. Applied as a cohesive set of dimensions that constitute organizational dysfunctionality, these dozen elements offer the basis for individual and interactive assessment of the three levels listed here and the degree to which they affect, in part or whole, organizational performance. As a basis of assessment, they allow an organization to proactively intervene to prevent organizational dysfunctionality; they also work as a tool for strategic development and as a retrospective on what happened when things go awry.

The literature is conclusive in that organizational ethicality has a discernible effect on performance and, further, that unethicity is costly both in resource and reputational consequences. By shifting the focus solely from what enhances ethicality to encompass what contributes to dysfunctionality, organizations have a more informed basis for advancing overall effectiveness and efficiency, as well as preventing potential problems. As trust in the public sector continues to decline, the viability of the public sector to address the increasingly complex social problems it faces is called into question. A transparent assessment and application of the tools presented here offers a starting point in rebuilding trust and confidence, by those both inside and outside the institution. It is hoped that the collective analysis presented here will lead to a more systematic review of elements that constitute organizational ethics and the profound role they play in both individual and organizational performance.

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## Public Service Morals and Ethics

### Thin and Thick Dilemmas in Routine and Critical Situations

*Robert Schwartz*

It is time for public administration to stop putting its head in the sand about the conflicting moral pulls and ethical pushes faced by many public officials. Traditional public administration doctrine attempts to minimize exposure to ethical pushes. However, modern management approaches teach that managers should nurture thick ties with and among workers. And proponents of communitarianism and civil society encourage people to develop their social capital by participating in caring communities and to use these thick relations for their own benefit. This chapter illustrates the tensions between these approaches and opens a discussion of how public administration might begin to deal with morals-ethics dilemmas.

Political theorists, such as Jürgen Habermas, distinguish between morals and ethics. Habermas (1998, 27) considers morals to be concerned with “questions of justice, of the principles and attending duties through which a society should be organized.” Ethics, on the other hand, takes into account relationships with people who are part of caring communities—families, landmen, fellow workers and fellow worshippers. Philosophers apply the language of thin and thick to this distinction. Avishai Margalit (2002, 37), for example, uses the term “thin relations” to describe morality, which “ought to guide our behavior toward those to whom we are related just by virtue of their being fellow human beings.” Thick relations dictate ethical actions that require preferential treatment of people included in one’s caring communities.

Starting, at least, with Max Weber, public administration doctrine has taught civil servants to disregard thick relations in performing public duties. In Weber's conception, a bureaucrat "is not loyal to his boss as a person but to the boss's position; that is, 'modern loyalty is devoted to impersonal and functional purposes'" (Weber 1946, 197, from Behn 2001). Wilson's attempt at creating a divide between politics and administration was a monumental force in this direction. The history of public administration since the late nineteenth century is largely about attempts to reduce the role of thick relations that involve patronage, cronyism, and graft (Anechiarico and Jacob 1996, 20–22). Numerous institutions are designed precisely to diminish the chance that public officials will face situations in which they have to choose between moral pushes and ethical pulls. These institutions include civil service rules that prevent family members from working in the same department; merit-based hiring and promotion; tendering for contracts; and conflict of interests rules.

Of course, much has happened in public administration since Weber. Public managers know that in order to motivate employees they need to create a sense of organizational commitment and loyalty. Transformational leadership is a common approach to promoting organizational commitment. Under this approach, managers fashion supportive working environments in which there is a "sense of purpose and a feeling of family" (Chen 2004, 435). Bass and Avolio (1993) found that in transformational culture organizations, commitments tend to be long-term and there is a sense of mutual interests, shared fates, and interdependence. This necessarily involves promoting thick relations within the workplace. Moreover, contemporary managerial approaches dictate cutting red tape and increasing flexibility—seemingly unconcerned with the risks entailed for increasing ethical pulls.

On the societal level, in the face of alienation, anomie, and democratic deficits, there is a move from enlightenment ideas of universalism toward developing thicker relations in various walks of life. This is expressed in Etzioni's (1993) communitarianism and in the movement to renew civil society. For example, Putnam defines social capital broadly as "social networks and the norms of reciprocity and trustworthiness that arise from them" (2000, 19). Woolcock and Narayan (2000, 226) consider that the "basic idea of social capital is that a person's family, friends, and associates constitute an important asset, one that can be called on in a crisis, enjoyed for its own sake, and leveraged for material gain" (quoted by Putnam and Goss 2002, 6).

These trends promote the creation of caring communities both within the workplace (including the public sector workplace) and in the surrounding environment. Margalit's book *The Ethics of Memory* serves as a philosophical reminder not only to justify our thick relations, but to demonstrate that these

are essential to our sense of humanity. There are people whom we should care about more than we care about others and we should treat those people differently (better) than others.

Public officials who develop thick relations in and out of the workplace face difficult dilemmas between following general norms of justice and impartiality or providing preferential treatment to members of their caring communities. This chapter addresses a number of questions about such dilemmas: When, if at all, should public officials prefer thick relations over thin principles? What are the consequences of preferring thick relations? What guidance can research in public administration offer to public officials in dealing with morals-ethics dilemmas?

O'Kelly and Dubnick (2006) note that the tensions between preferring members of our caring communities and commitment to universal ideals of justice are addressed in a number of literatures but have drawn little attention in public administration. Indeed, public administration seems often to act as if we lived in the ideal world of Weber's impersonal, rule-bound bureaucrat. For example, typical codes of ethics require public officials to provide services in an "equitable manner," deal harshly with conflicts of interests, and promote clear distinctions between private and public life (Lawton 2003). Similarly, two of the seven principles of public service recommended by the Nolan Committee (1995) in the United Kingdom address the need to contain the influences of thick relations: Principle 7, "Serving the Public Interest," requires that "public officials should make decisions and act solely in the public interest and not in their private interests, including the interests of family or friends or any other outside body or group. Public office should not be used for private gain." And Principle 9, "Impartiality," states that "public officials should make decisions and act in a fair and equitable manner. Choices should be made on the basis of merit, and advice offered should be without 'fear or favour.' Preferential treatment should not be given on the basis of colour, race, nation, nationality, sex, language, religion, political opinion or other status or any other irrelevant consideration."

This chapter demonstrates the pervasiveness of morals-ethics dilemmas in routine public sector situations and illustrates the dynamics of addressing these dilemmas in crisis situations. Cases are drawn from two very different political-administrative settings. Canada is a developed nation with a reputation for high integrity. Canada ranked 12th with a score of 8.5 out of 10 in Transparency International's 2004 Corruption Perceptions Index. Israel is considered to have adopted more questionable norms of public integrity from its East European and North African immigrants (Danet 1990). With a score of 6.4 on Transparency International's scale, Israel ranked 26th, behind most of the Western world.

I begin by showing how morals-ethics dilemmas arise routinely in a number of areas of public service in both countries. The next section describes and analyzes two crisis-related cases—one from Canada and one from Israel. In both cases, individuals are faced with difficult decisions between honoring their thick relations with caring groups and promoting thin ideals important for the general public. The cases demonstrate how considerations to follow thin pushes and thick pulls are dynamic. In both cases, actors tend to follow thick pulls until thin pushes become unbearably strong—but too late to prevent considerable damage to thin ideals and to people distant from one's caring community.

In analyzing this pattern, I use Margalit's idea of allowing ethical relations to play a role "as a moral tiebreaker but not otherwise":

*Ethical relations involve partiality—that is, favoring a person or a group over others with equal moral claim.* So how can we require ethical relations to pass the morality threshold test? Is, for example, nepotism—that is, favoritism based on family ties—unethical? If it is, then what kind of partiality is allowed . . . Nepotism is not a tiebreaker; it is immoral and unethical. It is favoring a family member over a nonmember who has a much better moral claim to the job or position . . . *Ethical relations are allowed to be partial as a moral tiebreaker but not otherwise.* Take the proverbial case where a man sees two people drowning—his wife and a stranger. The two in danger have equal moral claim to be saved—they are in a moral tie. But the man has an ethical obligation to choose to save his wife. (Margalit 2002, 87–89; emphasis added)

### **Morals-Ethics Dilemmas in Routine Operations**

Rules and regulations aimed to reduce exposure to ethical pulls exist both in Canada and in Israel. Yet these rules do not and (certainly in Putnam's and others' views) should not sever the strong ties that officials have with family, friends, and members of other caring communities. It is perhaps inevitable that situations arise in which public officials are pressed to favor their thick ties over thin moral principles of justice and equity. Indeed, for many public officials, morals-ethics dilemmas arise every day (O'Kelly and Dubnick 2006). This is true for countries at different stages of modernism, although perhaps more prevalent in premodern cultures.

Brenda Danet (1990) describes four types of societal cultures based on (1) the presence of cultural factors legitimating particularism and (2) objective difficulties in obtaining resources. She would identify Canada (and the United States) as Type 1 societies in which "pre-modern cultural values like those of familism do not impinge on bureaucratic encounters (although 'old-boy'

networks do occasionally impinge on bureaucratic encounters) and there are few objective difficulties in obtaining resources" (1990, 910). Danet places Israel at the opposite extreme as a Type 4 society: she brings empirical evidence from a survey study to show that in Israel there are both objective difficulties in obtaining benefits from public agencies and two cultural factors that legitimate particularism: ethnic solidarity and illegalism.

### *Israel: Land of Protektzia*

Danet's study collected information on the prevalence of what is known in Israel as "protektzia" and in English as "pull" or "pulling strings." *Protektzia* is "the granting of preferential treatment in circumvention of official rules by an important person, because of kinship or social ties, and so forth" (Ben Amotz and Ben Yehuda 1982, n.p.). Many types of relationships can provide the basis for particularistic intervention. Among Israelis, these include old friendships from school, shared experiences in a kibbutz, service together in the army, and common ethnic origin.

I argue that, in most cases, *protektzia* occurs in situations of moral ties or near moral ties. Two people are equally entitled to receive a telephone line. They have an equal moral claim—so the sister of the director of the phone company gets her line first. Two patients are equally in need of heart surgery. They have an equal moral claim. So the brother-in-law of the surgeon gets his surgery first. Whether these situations are moral ties is arguable, depending on whether one's place in line is part of a moral claim. I consider one's place in line to be a moral claim, but a weak moral claim compared with, for example, greater medical need. I therefore treat these cases as cases of near moral ties. For the thoughtful official, it would not be immediately clear whether to prefer the weak moral advantage of the stranger who is ahead in line to the strong ethical relations with the brother-in-law who is behind in line.

*Protektzia* is highly prevalent in Israel. Fifty-nine percent of respondents reported using *protektzia* in Danet's 1990 study: "In short, given the opportunity to use *protektzia* (or asked by others to do so on their behalf), most Israeli Jews do so." A more recent study on the use of *protektzia* by social work clients in Israel revealed similar patterns (Auslander 2000). Quoting Avruch (1981, 120), Danet describes Israel's ethnic solidarity as largely responsible for the high prevalence of *protektzia*: "It is a society where immigrants believe relations among Jews would be, as in a family, warm, intense, face-to-face, diffuse, multiplex, and moral." This sounds a lot like what Putnam and others aspire to achieve in their calls to promote social capital.

An enabling cultural variable that accounts for the high prevalence of *protektzia* is "illegalism." Sprinzak (1993) demonstrates a national tendency

in Israel to disregard the law when it stands in the way of obtaining desired results. This has been an important characteristic of national leadership and pervades both private and public sector attitudes.

### *Canada: Land of Integrity*

Canada has been described as having a political culture that is law-abiding and values integrity (Glor and Greene 2002). While espousing the ideals of multiculturalism, Canadian culture does not demonstrate premodern tendencies of familism and ethnic solidarity. It is not a country where one would expect *pretoktzia* to prevail. In the language of moral pushes and ethical pulls, one would expect universal moral pushes to prevail. Nevertheless, even in this seemingly cold and impersonal bureaucratic tradition, many public servants face morals-ethics dilemmas on a routine basis. An empirical study of preferential treatment on the part of physicians in Ontario is useful in demonstrating that thin-thick dilemmas abound even where administrative culture appears to be of high integrity (Alter et al. 1998).

Health care in Canada is funded through provincial health insurance plans that, under the Canada Health Act, "must entitle one hundred percent of the insured persons of the province to the insured health services provided for by the plan on uniform terms and conditions" (Canada Health Act). Due to rising health costs and budget difficulties, many medical procedures are in short supply with ensuing long waiting lists. Waiting lists for some procedures, such as coronary artery bypass surgery, are subject to a provincial queue management system governed by explicit clinical criteria. However, most cardiovascular services (and almost all other specialized services) are not so managed.

With an expectation of "some gaming of any system that imposes delays in access to services that patients value," a medical research team conducted a survey of physicians and hospital administrators to learn about their perceptions and experiences of preferential access to cardiovascular services (Alter, Basinski, and Naylor 1998, 567). The researchers administered anonymous questionnaires to 1,147 physicians (cardiologists, cardiovascular surgeons, general internists, and family physicians) and hospital administrators. They received 830 responses (72 percent).

More than 80 percent of physicians and 53 percent of hospital chief executives had been personally involved in managing a patient who had received preferential access on the basis of factors other than medical need. Patients deemed most likely to receive such treatment were those with personal ties to the treating physicians, high-profile public figures, and politicians. The survey did not permit estimation of the frequency of episodes of preferential access.

The findings of this study suggest that physicians (who are delivering public services) in Ontario face ethics-morals dilemmas as part of their routine practice. As the authors (one of whom is now dean of the University of Toronto medical school) point out, they have not undergone any training to help them think through such dilemmas, nor are there "ethical guidelines that define and circumscribe preferential access" (Alter et al. 1998, 567).

Doctors providing preferential access to family members, friends, or family members of friends represent an extreme thin-thick dilemma. In such situations, not acting on ethical pulls of members of their caring communities can result in pain, worsening health, and even death. Refusing to provide preferential treatment under such circumstances would place physicians in conflict with themselves and with friends and relatives. One distinction to consider here is the extent to which preferential health treatment situations resemble Margalit's moral tiebreaker example in which a man can save the life of only one of two drowning people, one of whom is his wife. Alter et al. (1998) did not collect information about the extent to which granting preferential treatment involved harming other patients. One question that a thoughtful physician would consider is risk of life and health to other patients on the waiting list caused by preferring access to a family friend.

Preferential treatment in health care—especially such health care as cardiovascular procedures—may be an extreme case. Similar, if somewhat less drastic, morals-ethics dilemmas present themselves wherever public servants have discretion in providing scarce resources to individuals or families. Examples include placements in long-term care facilities and acceptance to programs for gifted children. Academics face morals-ethics dilemmas more or less frequently. For example, a professor may feel pressure to accept the nephew of a colleague into a master's degree program or an unspoken (usually) expectation to give preferential treatment in appointments and promotions to candidates from her own department and those who studied with her dissertation adviser. In the "blind" refereeing process, reviewers who recognize the work of a friend, colleague, or friend of a friend deal with the pulls of these ethical relationships versus the moral principles of blind refereeing.

The findings of this section suggest that some public officials, even in Type I societies, routinely face ethics-morals dilemmas. With some investment, it might be possible to eliminate some, but not all, of these dilemmas by devising mechanisms governed by explicit criteria along the lines of the queue management system for coronary bypass surgery in Ontario. The desirability of this type of solution is debatable for those who are interested in promoting caring communities and for those who are interested in promoting "thoughtful" civil servants.



Under routine conditions, proponents of human relations, communitarian, and social capital development are likely to allow for some wandering from strictly impersonal moral principles. It seems that people (and regulatory bodies) are often willing to live with some preferential treatment that does little tangible harm.

The next two sections raise the stakes by presenting two critical cases to illustrate the possible ramifications of morals-ethics dilemmas in crisis situations.

### **Walkerton, Ontario: Ethics-Morals Dilemmas**

Walkerton is a rural town of some 4,800 residents in southern Ontario, Canada. In May 2000, Walkerton's drinking water was infected with *E. coli* (*Escherichia coli* O157:H7.1) when a heavy rainstorm washed the manure from a neighboring farm's fields into the water sources. Inadequate chlorination and monitoring allowed for the deadly bacteria to pass through the town's rudimentary water production facilities, resulting in the deaths of seven people. More than 2,300 became ill, many with long-lasting effects. News of the tragedy caused widespread panic about the quality of drinking water across Ontario, and the government appointed a commission of inquiry headed by Justice Dennis O'Connor. Among the findings of the commission were the facts that managers and operators of the water system were incompetent, lab results indicating infection were not reported to the proper authorities, and the Ministry of Environment had done nothing to remedy serious problems that it had known about for years (Walkerton Inquiry 2002).

The Walkerton Inquiry report, along with a book-length journalistic account (Perkel 2002), provides unusual insights into morals-ethics dilemmas faced by individuals at different stages of the story.

#### ***Hiring of Stan Koebel as General Manager of Walkerton's PUC***

The decision made in this first morals-ethics dilemma may be the original sin that resulted in a series of poor decisions that led, eventually, to tragedy. In 1988 the position of general manager of Walkerton's Public Utilities Commission (PUC) became vacant. Five people applied for the position: four out-of-town applicants with good qualifications and one local candidate, Stan Koebel, with no formal training or managerial experience who, at the time, served as foreman of the PUC workers. The commissioners did not exert too much energy thinking through this dilemma. They quickly chose Stan Koebel, who subsequently appointed his brother, Frank, to the position of foreman.



Margalit would consider the commission's choice as wrong because ethical relations were preferred in a case that clearly did not involve a moral tie.

### *Dilemmas in the Routine Operation of the PUC*

The results of this brotherly relationship in the workplace highlight why public service rules generally prevent family members from working in the same department and from being in supervisor-worker relations. Both brothers faced morals-ethics dilemmas stemming from this situation. For example, faced with Frank's frequent on-the-job drunkenness, Stan chose what he perceived as his ethical duty to protect his brother over his moral duty to discipline or even fire him. Frank, and other PUC employees, preferred the thick relations of the workplace over telling the truth when they followed Stan's lead in labeling water samples taken from taps in the PUC offices as if they had been taken at wells.

Thick relations beyond the workplace affected the professional work of the PUC as well. Government guidelines required the PUC to maintain minimum levels of chlorine in the water system. The Koebels, however, preferred to respond to pressures from neighbors, relatives, and friends who did not like the taste of chlorinated water.

Until here, we see that in the operation of Walkerton's drinking water system under normal (routine) circumstances, ethical relations prevailed over moral principles. It is easy to criticize the actors for choosing ethical relations in situations not involving moral ties, but few would consider these matters sufficiently serious to warrant corrective action. While perhaps morally wrong in Margalit's terms, this situation seems quite typical of many small-town (and some big-town) municipal undertakings. One can envision a 1960s family TV series making light of such a situation. Some might see it as quaint; others might even be envious of the sense of community, kinship, and friendship represented by Walkerton's PUC.

### *Facing Dilemmas in Times of Crisis*

What may have passed under normal circumstances did not hold when tragedy struck. On May 19, 2000, contaminated drinking water was identified as a possible cause for people falling seriously ill with bloody diarrhea and vomiting. This presented Stan Koebel with a new and very different morals-ethics dilemma. Stan and Frank were responsible for the fact that for a full week no chlorine at all had been added to the town's drinking water. Furthermore, at the time when people began to get sick, on May 17, Stan Koebel had lab results from the previous week's sampling indicating beyond any doubt that the

water was contaminated and that chlorination levels were well below standard. The dilemma Stan faced was to heed the moral principle of safety and health for all by coming forward with his knowledge, thereby preventing people from continuing to drink the water and becoming ill, OR to prefer ethical relations and protect his brother, other PUC staff, and himself by concealing his knowledge and covering up incriminating evidence.

With time, as they became aware of the facts, three other people faced similar dilemmas: Frank Koebel, Bob MacKay (a PUC employee), and David Thomson (the mayor). Frank Koebel and the mayor chose ethical relations over moral principles. In Stan and Frank's defense, it is important to note that, while concealing the problem, they took action that they believed would solve the problem "without anyone knowing"—flushing of the water system and chlorination. But they were wrong. The mayor was apparently blinded by thick relations. When told of the water problem, he could not believe that the Koebel brothers had failed and he trusted that they knew what they were doing in acting to rectify the problem.

Bob MacKay, a junior PUC employee, exercised better judgment. He was on sick leave at the time of the incident. In a chance conversation, Frank Koebel had mentioned some poor lab results. When MacKay saw unusual flushing and heard about people getting sick, he began to put two and two together:

Bob MacKay was fretting. The unusual flushing he had witnessed and his wife's mention of the sick kids had nagged at him through the previous evening and into the morning . . . He headed home and called his mother. "Mom, what should I do?" he asked, after explaining what was bothering him and what he had in mind. "Bob," she said, "you do the right thing."

(Perkel 2002, 93)

MacKay proceeded with a series of anonymous telephone calls, over the course of three days, to the Ministry of Environment's emergency hotline. The information he provided became more specific and more damning in each phone call as MacKay saw more people becoming more ill. Put differently, MacKay's loyalty to thick relations developed in the workplace weakened as the damage done to thinner relations increased.

This acute case serves to show that what seems like harmless favoring of thick relations over moral principles in routine circumstances can have dire consequences when the going gets hot. The Koebels and the mayor were not evil; they intended no harm. Rather they were blinded by thick relations. Each trusted that the other knew what he was doing and that none would do anything that might put them, or the town, in danger. The following passage from Perkel is illustrative:

The mayor, David Thomson, was both nervous and unhappy. He had no desire to hang Stan out to dry . . . Thomson knew Stan's parents. He had run into Frank Sr. during his days as the town's works foreman, and the elder Koebel and his wife came out to the Thomson farm now and again to buy eggs. They were decent people. And Stan had always seemed dedicated and knew the ins and outs of PUC. Maybe there was another explanation for what had happened . . . For days he had given Stan the benefit of the doubt. As mayor, he had sat on his hands after McQuigge (a public health official) called him about the boil-water advisory on the Sunday. He had done nothing even after Stan had told him the same day he was working on the system. He had then deflected, defended, waited. He had refused to believe that the man he had trusted had misled him. In 2004 Stan Koebel was sentenced to a year in jail and his brother Frank to nine months house arrest. (2002, 141)

### **Tel Aviv: GSS Bus 300**

Military and intelligence organizations depend on thick internal relations. In war, soldiers' lives depend on the willingness of comrades in arms to go out on a limb for them. Complete loyalty to the commander is deemed vital to success. In Israel, special relations among soldiers in the same unit are legend. They spill over to civilian life, including providing financial assistance, jobs, and various favors for comrades in arms.

Intelligence organizations rely on a veil of secrecy over their operations. The need for secrecy contributes to an "us" versus "them" mentality in which agents protect each other against external demands (Schwartz and Sulitzeanu-Kenan 2004). The American Irangate affair illustrates this well, as does the British weapons of mass destruction (or Hutton) inquiry—surrounding the suicide of Dr. David Kelly—described in O'Kelly and Dubnick (2006). I have chosen an Israeli example to illustrate the dynamics of morals-ethics dilemmas in the operation of an intelligence organization.

Parallel to the Walkerton progression, the General Security Services (GSS) Bus 300 case begins with a description of how preference of ethical relations over moral values prevailed in routine or normal circumstances. The focus here is on the intelligence agency's relations with the justice system (courts and prosecution). The story begins in 1971 when GSS agents were first required to testify in court about whether illegal physical pressure was used to obtain confessions from suspected terrorists. During the period 1971 to 1987, GSS agents testified in court numerous times, wrongly denying that physical pressure was used to extract confessions from terrorists. They also concealed information in their submissions to the prosecution (Landau Commission 1987).

While the practice of lying to prosecutors and judges was started on an ad hoc basis by individual agents, it soon became an undeclared policy of the organization. The Landau Commission discovered written evidence of the policy in a memo summarizing a meeting between the GSS chief and the head of the GSS Interrogation Unit: "*In mini-trials . . . we will deny the exercise of [physical pressure] and claim that [interrogation] is acceptable according to prison regulations*" (Landau Commission 1987, 286).

GSS agents summonsed to testify in court faced a morals-ethics dilemma. Telling the truth would mean betraying their thick relations with commanders and fellow agents responsible for ordering and implementing the torture. It would also reveal the secret policies of the use of force in GSS interrogations, thus risking what was considered within the organization to be a vital tool in the battle against terror. The moral pulls of truth, justice, transparency, and democracy proved to be relatively weak: the Landau Commission did not reveal any cases in which GSS agents chose to tell the truth about the use of physical force in interrogations.

Margalit would say here that thick ethical relations cannot justify acts that are morally wrong. But at least to GSS agents, the moral wrongness was excusable in light of the importance of loyalty to fellow agents, guarding the secrecy that veiled GSS activity, and the payoffs of torture in the battle against terror. In normal circumstances, this unjustified preference of thick relations might seem understandable to the reasonable observer. Not unlike the Walkerton case, this type of choice appears less reasonable when an extraordinary incident occurred.

On April 12, 1984, a group of four terrorists hijacked Bus 300 leaving the Tel Aviv central bus station. The first official reports were that the four terrorists and one passenger were killed in the course of the hijacking. Some days later, reports in foreign newspapers claimed that two of the hijackers had been taken alive and killed after the event. One photograph showed the two terrorists, clearly alive, being escorted by security personnel (Black and Morris 1992, 402; Peri 1999, 127). This photograph marked the beginnings of the exposure of extreme organizational deviance in GSS involving unlawful killings of terrorists, torture of prisoners, and false testimony to courts and investigation commissions. This exposure focused public attention on the operations of GSS and led to investigations by internal and public committees.

Two inquiry committees were appointed to investigate the affair. The Zore's Committee found that military and GSS personnel used violent force against the two captured terrorists. Following these findings, a second investigative committee, headed by the state prosecutor Yonah Blatman, concluded that there was insufficient evidence to charge anyone with killing the two terrorists, but recommended that several military, police, and GSS personnel be

tried for assault (Black and Morris 1992, 403; Landau Commission 1987, 273; Peri 1999, 130; Sprinzak 1993, 173).

Over the course of a two-year period, GSS officers continued to let thick relations within the workplace prevail over the moral obligation to the wider society of bringing those responsible for the killings to justice. Indeed, many officers actively took part in the cover-up by misrepresenting the facts of the case to the two inquiry committees. Lying to the inquiry committees was a natural extension of the practice of lying to courts about torturing prisoners. GSS officers preferred their ethical ties to their fellow officers and to their commanding officer over the moral norm of justice.

Moral pulls prevailed over ethical pushes only when, after two years, it became clear that neither committee of inquiry had succeeded in uncovering the truth and those responsible for the murders were about to get off with no punishment. For some officers, what seemed harmless in routine situations proved unacceptable in a more extreme case in which prisoners were murdered. Three high-ranking GSS officials took the moral high ground in revealing a massive cover-up of wrongdoings and demanding the resignation of the GSS chief. Going against the service's sacred tradition, these officers informed high-ranking officials in the Ministry of Justice about the killing of the two hijackers and the cover-up attempts. Subsequently, government legal adviser Yitzak Zamir submitted an official criminal complaint against Avraham Shalom, the head of GSS, for ordering the killing of the two terrorists. Soon after, one of the three dissenting GSS officials petitioned the high court of justice, demanding that the prime minister and Shalom explain why he should not be immediately dismissed. Newspapers reported that the GSS chief was accused of withholding information about the Bus 300 affair, pressuring witnesses, and obstructing official investigations.

Evidence pointed to orchestrated cover-up activity in the proceedings of the two investigation committees. Prime Minister Shimon Peres refused to act on this evidence against the advice of the government legal adviser, who recommended the immediate dismissal of the GSS chief and two legal advisers (Black and Morris 1992, 405; Peri 1999, 131). Questions regarding ministerial responsibility began to be raised, along with a demand to establish a state investigation commission. In an attempt to calm things down, the government decided to accept an earlier request by Zamir to finish his term as government legal adviser. His replacement agreed to a settlement, according to which Shalom resigned and the president of Israel pardoned him and three of his aides without charging them. Eleven men who were involved in the Bus 300 affair eventually received pardon in this manner (Black and Morris 1992, 407; Peri 1999, 133; Sprinzak 1993, 173). Partially spurred by the Bus 300 affair, a state

investigation commission—the 1987 Landau Commission—was established to investigate certain aspects of GSS interrogation methods.

GSS agents were willing to go along with ethical pushes and do such things as lie in court so long as they perceived that these actions did much to serve their own caring community and did bearable damage to universal moral ideals. Lying to the courts about the use of force in interrogations seemed quite harmless to universal ideals of justice and democracy and at the same time served to protect those agents involved in ordering and administering the torture and to further the all-important goal of fighting terrorism. However, for some at least, killing prisoners and then lying to cover it up was too great an infringement of justice and democracy.

A number of GSS personnel faced the dilemma between covering up in order to protect thick relations with fellow agents who would face charges of murder or telling the truth to investigators, judges, and the public and fulfilling their universal moral obligations. While thick pulls prevailed over most, three thoughtful agents chose justice.

## Discussion

Public officials in both Type 1 and Type 4 societies maintain thick relations with fellow workers and with various caring communities outside of the workplace. Some public officials routinely face morals-ethics dilemmas when individuals from caring communities seek preferential treatment. Often, thick relations prevail over general norms of justice. While such behavior may be considered a breach of public integrity, in routine circumstances it may pass as being relatively harmless.

Comparative critical cases from the two different types of society demonstrate similar outcomes. When faced with organizational crisis, preference of thick relations over general moral norms led to disastrous or near disastrous outcomes. Thick relations contributed significantly to illness and death in the Canadian Walkerton case and to preventing murderers from being brought to justice in the Israeli GSS case. Had the Walkerton PUC operated in accordance with thin principles only, Stan Koebel would never have been hired as general manager, Frank Koebel would have lost his job, unchlorinated water would not have been released, and any sign of a problem would have been quickly revealed. Had thick relations not dominated the GSS, agents would never have lied to the justice system or covered up the killing of prisoners in order to protect fellow agents.

What should be learned from these extreme cases? Perhaps it would be best to promote impersonal workplaces in which workers did not develop more than superficial ties with colleagues. But we want and often need to develop

thick relations. It is thick relations that make our work-life satisfying—some would say human. It is thick relations that promote loyalty and enhance organizational performance. And it is thick relations that lie at the roots of the development of social capital. Preventing thick relations would negate much of the benefit attributed to the human relations approach with deleterious effects on loyalty, turnover, and productivity. Similarly, it would prevent the development of social capital considered vital to the health of democracy. Finally, it would take us quite a few steps back in the quest to alleviate alienation and anomie. Preventing thick relations in and surrounding the workplace is neither desirable nor feasible.

Lessons from these cases might rather start by recognizing the desirability and inevitability of thick relations within and without public sector workplaces. Rather than pretending that they do not exist, public administration should embrace thick relations and offer guidance on dealing with associated morals-ethics dilemmas that arise in routine situations and in times of crisis. Managers, auditors, ethics officers, and external oversight institutions need to recognize the gains and pains of thick relations. They should be particularly attuned to the risks engendered in thick relations when organizations are strained by difficult or crisis situations.

There is a need to develop systems that provide incentives for public officials to think and speak out when they suspect that thick relations are at risk of threatening safety, health, and basic principles of justice (see O'Kelly and Dubnick 2006). Two institutions that may be helpful to some public officials are whistle-blower protection laws and ethics officers. Yet our knowledge from empirical studies on the extent to which they are used and useful for public officials in various settings for addressing ethics-morals dilemmas is sparse. How can we then encourage reflection and ultimately dissent when necessary within the context of desirable thick relations? It seems that insufficient attention has been devoted to creating institutions to help public servants deal with the inevitable tensions that many will face between moral pushes and ethical pulls.

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## Power and the Ethics of Reform

*Ciarán O'Kelly and Melvin Dubnick*

There are two broad traditions in the study of administrative ethics. The *moralist* tradition is central to most of the contemporary literature on ethics in public administration, and its essence was captured in Dennis F. Thompson's 1985 definition of the field: "Administrative ethics involves the application of moral principles to the conduct of officials in organizations." For public administration, he continued, it is a "species of political ethics, which applies moral principles to political life more generally" (555).

By contrast, an *instrumentalist* tradition, which is more prominent in today's generic management literature and less often found in the study of public administration ethics, offers a different perspective, one that highlights the functionality of ethics and its role as a means for coping with dilemmas and other problematic situations that arise in the effort to control and coordinate. Despite the often peripheral (and frequently critical) attention this instrumentalist view receives among public administration ethicists and others, it has deep roots in many of the foundational works of the field, from Woodrow Wilson's often-cited article "The Study of Administration" (1887) at least through Herbert Simon's *Administrative Behavior* (1957).

Posing this stark contrast between two traditions serves a number of purposes. First, it highlights a distinction among students of administrative ethics that creates a major barrier to the advancement of our collective endeavor to understand and appreciate the role of ethics in modern organizational contexts. Each tradition regards the other as myopic and lacking perspective due to an intellectual form of tunnel vision. Second, it calls attention to a false sense of incommensurability among those who address similar or overlapping is-

sues within each tradition. For those in the moralist tradition, it is often more rewarding to be critical than analytic, while instrumentalists approach their subject matter with less certainty as to the normative criteria that ought to be applied. This, in turn, spills over to a third consequence of the division: while both traditions generate prescriptive action agendas, the moralist school tends toward institutional reform, through law and other regulatory mechanisms, while the instrumentalist is more likely to focus on design and enhancement of problem-solving capacities.

We stand aside from this debate and seek to address the complex interplay of instrumental and moralist concerns as they are brought to bear on administration through the language of ethics. We approach ethics less as a guide for individuals or as a tool for managers and more as one component in the unending struggle to define, shape and wield the institutional purpose toward particular ends. These ends emerge in turn from a combination of normative and instrumental concerns and are fundamental in shaping our lives as administrators and indeed as moral persons within our roles. As such we do not argue for a particular "ethics" as a guide to individual behavior in work. Imperatives for "personal integrity" (Dobel 1990) or "patriotic benevolence" (Frederickson and Hart 1985; see also Frederickson 1997) or "constitutionalism" (Rohr 1998) do not take into account the fungible character of what it is to be human in the context of the modern organization. Nor do we argue for ethics as the solution to some problem of administration. Rather, we ask how ethics, specifically as articulated in the tension between "thick" and "thin" standpoints, infuses and shapes administrative life.

Our starting point is Alasdair MacIntyre's observation about "character" in the modern corporation:

In the modern corporate organization character has become more like a mask or a suit of clothing; an agent may have to possess more than one. So the difficulties, indeed the impossibilities, which would result from trying to embody a contradictory and incoherent set of virtues systematically, are avoided; each character is allocated its own place and its own tasks in the corporate world. Nonetheless the corporation itself delimits the range of possibilities; what it takes to be the good provides a moral horizon.<sup>1</sup> (1979, 125)

That is, the formal and informal roles we adopt when we act as organizational agents carry within themselves *self-contained moral vocabularies*: as we discuss below, they describe the "proper" landscape of work and to a large extent it is up to administrators to obey. In this sense they are both moralist and instrumental: the two cannot be separated out in practice. Administrative

ethics is *administered*: it is part of a script, outlining how we ought to present the self in organizational life.<sup>2</sup> The study of administrative ethics, therefore, is the study of administration before it is the study of ethics. It is the study of the *enforcement of power through ethics*.

The language of administrative ethics is of course not totally disconnected from “ordinary” moral vocabularies. Rather, how ethical landscapes form and are formed in organizations is a function of the complex interplay of internal and external moral, ideological, and political debates. Actually, existing ethical landscapes are one part of the broader tectonics of political power. They are, in Foucault’s terms, related to the administration of administration and the “conduct of conduct” within administration—a matter of the “government” of possibilities for action (Foucault 1994b, 340–341). Ethics, in this sense, is rooted in the attempt both to produce amenable mentalities, well disposed toward corporate ends, and, failing that, to explain the development of organizational mechanisms that enforce compliance in line with corporate ends. These ends in turn may be drawn from political stances about organizational forms, about the legitimate bases of power over others, about the organizational purpose and the role of the public sphere in people’s lives. Importantly, therefore, ethics is a matter ultimately of some *defined and enacted political stance*: it is an articulation of power.

Power, simply and broadly defined, is the capacity to get someone to do something they might not otherwise do (Dahl 1957). In Foucauldian terms, it is the capacity to govern—that is, to exercise the influence of government broadly conceived—over individuals who are not necessarily inclined to act in accordance with the priorities and preferences of the governing party (Foucault 1994b). This “capacity to govern” can take many forms, ranging from coercion and surveillance to persuasion and the use of carefully designed “nudging” mechanisms (Lindblom 1977; Thaler and Sunstein 2008).

Administrative ethics, in other words, is situated in the midst of the ongoing struggle to shape organizational governance—it is the administration of administration. We view ethics as a mechanism of governing that falls within that range, especially in regard to organizations that rely primarily on the work of professional communities. Within such organizations,<sup>3</sup> professional commitments and norms play a critical role in shaping behavior, and these often take the form of ethical standards in which “thick” peer relationships inform the actions of individuals and the groups within which they work. Organizations that are formed and operated based on those thick relationships—for example, hospitals run by doctors, schools run by teachers—reflect an ideal type for many, although they also represent a challenge to those who seek change, innovation, and openness in such key institutions. The latter group

often regards thick relationships and the power of ethical consensus around professional norms and practices to be obstacles that require modification, if not complete reorientation. Whether in the form of management focused on efficiency, governing boards committed to profit, or external (or even internal) reformers seeking to alter the social role and function of the organization, these would-be change agents frequently pursue strategies focused on breaking the hold of (or at least “thinning out”) those thick relationships and the ethical anchors they create and sustain.

For present purposes, we will focus on the use of a particular set of mechanisms—the metrics of accountability—to reflect the efforts made by reform-oriented actors to bring about organizational and institutional change. These efforts are, in fact, focused on changing the ethical landscape and ethical vocabularies of those professionals who control the core technologies of the organization. What they seek is to counteract the ethical pull of thick relationships with the standards and preferences of an ethical regime based on a thin (or at least thinner) standpoint.

In the next section we discuss moral personhood and its place in institutional and organizational contexts. The second section focuses on the role of metrics and measures in the production of administrative ethics, and how tests and measures act as communicative devices, shaping the styles of favored moral agency as manifested in bureaucratic bodies. In the third section we turn to the concepts of “thick and thin,” and how they focus our attention on the tensions in bureaucratic life between administrative communities and the external oversight and disciplinary techniques of reformers. We discuss the rise of accountability as the government of conduct rather than as the conduct of government.

Finally, in the last section, we use two case studies that reflect our discussion of administrative ethics. Focusing on the No Child Left Behind (NCLB) policies in American public education, we discuss the role of ethics in implementing thin (by our accounts) “standards” in schools and the manner in which thicker perspectives on educational practice have adjusted to the NCLB regime. We then examine reforms to the English National Health Service<sup>4</sup> (NHS) that are motivated by the desire to “hand control back to doctors and nurses.” We suggest that, despite the rhetoric of reform, this is not aimed at privileging thick standpoints per se, but at institutional change that seeks to move administration beyond existing ethical standards in the operations of the NHS. The reform initiatives of the current (Cameron) government are yet another moment in the interplay of thick and thin—in the struggle to define and control organizational conduct. We conclude the chapter with a brief discussion of the study of administrative ethics from this perspective.

### Moral Personhood and Administrative Life

Ethical stances rarely arise through processes of choice exercised by autonomous individuals. It is important not to think of individuals as coming to each moral predicament “ready-made” as moral thinkers. Rather our sense of moral personhood may be reformed and redefined by each dilemma we encounter. Each choice is made in a particular moment, in particular circumstances regarding particular persons. “Caught,” as David Carr puts it, “in the complex web of human association” (2003, 219), we can do little more than attempt to judge an appropriate course through conflicting imperatives and expectations. We might refer ourselves to “higher” goods. We might keep one eye on the constraints placed on our actions by families, societies, or workplace roles. Moral judgment can only exist embedded in a sequence of contexts, even when high principle is invoked.

Our standpoints are learned—indeed, they are *created*—across our lifetimes as we speak, argue, and interact with other people, with our communities, and with the institutions within which we live and work. The relationships we form around people, communities, and institutions are *educative*, morally speaking, and in this context moral agency is a skill—it does not preexist context: it is *acquired through context* (see Annas 2011). Institutions seek to intervene here, to self-consciously educate and drive us into particular modes of behavior, because they are concerned to recruit us into their ends. They could not function if we resolved our moral dilemmas entirely alone. So they seek to guide us, in subtle and not so subtle ways, whether through conversations or through direct management of our work.

Any encounter with administrative ethics cannot be driven by an attempt to define a “good” that individual administrators can apply because our sense of what is appropriate—indeed our very sense of moral selfhood—is context-driven, fungible, and subject to the power articulated as moral knowledge, as “justificatory truths” in Richard Rorty’s parlance (1980, 383),<sup>5</sup> where normative claims are disseminated as “facts about the world.” As such, how we construct ourselves in relation to administration is a matter of some concern for the institutions in which we work. In other words, the path we take through everyday predicaments is quite literally the business of modern institutional life. Institutions are intensely concerned with infusing work with particular notions of right and wrong because those notions of right and wrong are underpinned by particular ideas about social and organizational purpose. Institutional technologies are designed to communicate particular senses of the good, whether as constraints on action or as licenses for action, because those senses of the good articulate claims to institutional resources, and they describe the “proper” distribution of institutional resources among social groups. Given this, the paraphernalia of institutional life—processes of promotion and

demotion, of approbation and admonition, of measurement and management, of surveillance and accounts, and the frameworks of social regulation—law, rules, and regulatory conversations—are embedded in moral vocabularies that themselves describe, define, defend, and justify particular decisions in pursuit of particular institutional ends. Understanding administrative ethics on these terms, moreover, is key to any analysis of discipline and control, of standards, and of the terms of autonomy for bureaucratic communities.

The disciplinary mechanisms of bureaucracy are both license and constraint (E. Hughes 1958, 78ff.). Since discipline is most often thought of as a matter of constraint, it is perhaps difficult to think of it as license. We should recognize, however, that the rules and processes of administrative life can just as easily confer powers on people as take them away. Such a license may be mundane and technological—work with electronic equipment, for instance—or it may involve special privileges that shape the individual's entire life. Some people—soldiers, police officers, or capital judges, for instance—are even licensed to act over life itself. Such licenses indemnify people from having actions ascribed to them in a way that they would be in life beyond their occupations.

In administering administration, institutions demand that we actively *narrow* our thinking as moral agents (see J. Scott 1998); that we either set aside our moral intelligence and our moral skills<sup>6</sup> in favor of adhering to administrative authority, or that we maintain our focus in the workplace on the sense of the good produced by corporate ends. Work becomes the primary moral context and hierarchy replaces individual moral reason (see Wolgast 1992). While organizations and bureaucracies may be more or less formal, and more or less coercive in their disciplinary structures, they cannot seek to produce individual moral autonomy *per se*. The institution's job is in large part the manufacturing of a commonality of purpose toward institutional ends (Barnard 1938).

Institutions and the metrics they employ are thus designed to be *educative*. The administration of administration may not be performed through direct managerial coercion. Rather, it might be articulated as expectations in the context of metrics and surveillance, on the one hand, or through the production of professional communities, on the other. An organization's demands for a narrowing of moral vision can discourage the kinds of inquisitive account-seeking and account-giving that are characteristic of "ordinary" moral life at its best and replace them with moral instruments that both legitimate particular standpoints and actions and ensure that those actions take place.

### **Metrics, Measures, Rituals, and Rules**

Given the fungible character of moral agency, we now turn to the question of how institutions communicate and disseminate organizational ends to

individuals and how those ends are articulated as moral imperatives. In this regard, administrative ethics is but one element in the struggle to define organizational ends—a struggle that has come to define major governmental reform movements in recent decades.

We live in an era of constant reform, and government has increasingly turned its attention to the administration of administration as one of its core functions. Whether through outsourcing, New Public Management-style reforms, “reinvention,” or privatization, government has evolved as an intricate relationship between moral vocabularies and reasons, management techniques, monitoring technologies, and a range of accountability mechanisms. Institutions constantly attempt to render and stabilize moral conversations in such a way that centrally defined purposes and priorities can be pursued. They invoke common ends not only through informal “regulatory conversations” (cf. Black 2002), but also through formal management control capacities, including through the production of metrics and measures as communicative techniques.

Tests, audits, and other techniques aimed at specifically institutional ends are not simply technological: they are *statements of regulatory intent* driven by specific formulations of institutional ends and are invoked as ethics, particularly about the character and dynamics of administrative work (see Edelman and Suchman 1997; Suchman and Edelman 1996). The educative character underpinning regulatory intentions in institutional life is inescapable so long as we seek to organize ourselves in institutional forms. Furthermore, we cannot evade the dance between our moral lives and the moral expectations formed in institutions because our experience of life is entirely wrapped up in our experience of institutions.

Regarding the interplay of regulatory metrics and standards in particular, every act of measurement is “marked by the play of power politics,” and the kinds of formal order created within modern institutions are “always and to some considerable degree parasitic on informal [social] processes, which the formal scheme does not recognize, without which it could not exist, and which it alone cannot create or maintain” (J. Scott 1998, 27, 310). Standardization is not brought to bear passively on society: it is constructive of society and recasts individuals in line with the “narrowing of vision” involved. Measurement does not just shed light on preexisting facts, on, say, student capacities and teacher successes. It recasts institutional functions in terms of a narrowed sense of what those functions might be. And in that regard, a metric is revealing in terms of the institutions and roles it defines.

The difficult interplay of multiple and diverse expectations (see Dubnick 2005; Dubnick and Romzek 1993; O’Kelly and Dubnick 2006) are testament to the educative process that the modern organization seeks to bring to bear



on the self. In our technology driven era, furthermore, we direct an intense focus on the production of "fields of visibility" (Foucault 1979, 202), through the gathering of statistics, accounts, and audits (Power 1997). Through these metrics, accountability is often defined, articulated, and aimed at discipline through the production gestures of transparency—gestures, that is, in the sense that they induce vulnerabilities in the name of performance and in line with prevailing myths about the proper underpinnings of some particular mode of work (Meyer and Rowan 1977).

The disciplinary effects of statistics gathering, standards, and metrics, moreover, are not presumed to operate only after the moment when the measure is taken. They do not simply weed the nonperformers out (though they may do that both indirectly and directly). They also help bring the minds and thoughts of workers into line with organizational objectives. How these metrics impose discipline is very important to note. The first "pre-hoc" aspect of the information-gathering power of metrics lies in its production of "approved" vulnerabilities in the informal defining and outlining of roles. Knowing that senior managers and their bosses are armed with new forms of information, rendering work legible in specific and circumscribed ways, workers will be aware of their own vulnerability to managerial oversight. The workings of transparency are, after all, one-way. The existence of upward-moving transparency through metrics is not a good guide for individuals to predict effects. The subject of statistics is not necessarily made party to the "expert systems" (Giddens 1991, 18ff.) that the statistics produce. Instead, it is assumed that discipline will emerge through each individuals being aware that they will be subject to the metric at all. Or, even better, those individuals who are promoted and encouraged will align their moral mentalities to those favored by the institution, whether through judicious pruning of the workforce or through individual conviction. In many ways, this is the ultimate aim of standards and metrics as communicative devices: they aim to align individual and institutional norms. They are processes of normalization.

In addition to these directly disciplinary effects, the specific and circumscribed modes of metrics will act as an educative device by normalizing measured activities, setting them as organizational priorities. Measurement is a communicative device in and of itself. Standards do not emerge and are not defined after the act of measurement; they happen before. Individual workers (and new recruits) will likely see new metrics as communicating and normalizing the organizational purpose. They will perceive them as the communication that desired organizational ends be inculcated as primary individual virtues and, through processes of commendation and condemnation, that the metrics will be brought to bear on them, driving promotions, demotions, and managerial interventions. Compliance is rewarded or at least

promoted whether through formal mechanisms or through the more casual social processes. Metrics seek to legitimate particular standpoints and produce not only compliance, but also active dispositions on the part of their subjects. The institution, through the communicative power of metrics, seeks to “control the memory of the institution’s members” and “provides the categories of [members’] thoughts, sets the terms of self-knowledge, and fixes identities” (Douglas 1987, 112). The subjects’ roles are defined by the metrics, and the organization actively demands that they accept and internalize the discipline suggested by them. Otherwise, subjects will be left to one side.

### **Thick and Thin Standpoints, Accountability, and the Administration of Administration**

Individual moral selfhood is a highly fungible thing, and shaping moral selfhood is one key element in the administration of administration. The business of metrics is in large part communicative and educative: it is the business of disseminating moral ideals and of “setting the terms of self-knowledge and fixing identities,” as Mary Douglas (1987, 112) puts it. Metrics are part of the paraphernalia of governance that focus on narrowing our vision, on devising the institution as sovereign on its own ground—a kind of Hobbesian Leviathan (Hobbes 1996), setting the terms of moral truth so that order might emerge. The questions we should always ask, though, are “what truth?” and “whose order?”

In this section we set these struggles out in the context of “thick” and “thin” moral standpoints. Thick and thin ethics, broadly speaking, provide us with a cartography through which we can navigate such questions and survey the terrain of administration as competing pressures are brought to bear on its purpose. The concepts of thick and thin describe two categories of moral relations, the thin rooted in abstract principles (relations based on justice, desert, duty) and the thick in concrete situations (involving loyalty, commitment to others, love, faith).<sup>7</sup> As the philosopher Bernard Williams saw it, the manner in which thicker or “more specific” ethical notions are applied “is determined by what the world is like (for instance, by how someone has behaved)” in someone’s perception (1985, 144); these notions—for example, “treachery” or “courage”—contain within them both judgment (on a principle) and appraisal (of a person). Thin standpoints, in contrast, make reference to abstracted, universal principles that, despite their generality, ought to be applied in any particular circumstance. Such a “minimalist” (Walzer 1994, 1ff.) foundation for moral standpoints is focused on “procedures justice”—that is, on justice as being above context to a great extent.

In an organizational context, the “ordinary” components of thick and thin are bundled with ideas of discipline and power. How organizations are defined

and how those definitions invoke *justificatory truths* about the organizational purpose is articulated on more or less thick or thin lines. The disciplinary force that comes with those definitions proposes a combination of thin frameworks—for example, metrics oriented at invoking standards—and thick relations—for example, fealty to groups. The multiplicity of pressures, norms, metrics, rules, procedures, and conflicts to narrow one's thinking of the institutional good provides the backdrop through which the individual must ask the question: How do I work? How do I perform in my work as I engage with authority, with rules, with clients, colleagues, and the multilayered publics of administrative life? Upon what standpoints is my work borne?

The concept of thick and thin standpoints allows us to bring two competing forces in organizational life to the fore. Reflecting the more abstract principles in "ordinary" moral life, the thin organizational theme highlights the drive to focus the organizational purpose on some moral and political imperative. This focus requires a reinvigoration of the disciplinary aspects of organizational life as legal, institutional, or "cultural" reforms are brought to bear on the organization. The thin standpoint imagines the organization as bound by procedures and rules, subject to hierarchical lines, metrics, and standards. It sees itself as constructing rational, even "scientific" organizational processes and as rooted in systematic knowledge about the organization and its management.

The thick theme articulates an aspect of organizational life that imagines the organization cohering around internally validated processes, relationships, and meanings. It sees the organizational purpose as necessarily defined by the context that these relationships and meanings produce, by attention to individuals, and by relationships with others. Thick organizational processes are necessarily opaque to reform movements and are met with the suspicion that they mask narrow self-interest. These processes emphasize collective or group autonomy and do not welcome attempts at reform through metrics-driven standardization. Group contexts—such as professions and work groups—may define their autonomy against outside intervention, appealing, for instance, to particular conditions that do not lend themselves to scrutiny. As such, the individual in a thick, particularist work environment does not necessarily stand alone. The employee stands within a particular way of organizing administrative work. Conversely, while the thin theme is also a matter of organization, its focus is precisely on the outsider. Ends are imagined as externally defined, and means are a matter of aligning action to those ends.

Needless to say, in reality organizational life is pursued somewhere between these two broad types, and, as we see below, the dynamics of change and reform can be informed by perceptions about the interplay between the two. The parallel tracks described by thick and thin, however, are the source of much of the tension we might experience in organizational life. And how these tracks are

defined is the source of a struggle among institutional entrepreneurs who seek to define and shape organizational goals, whether in pursuit of “standards” and “discipline” or in pursuit of “professionalism” and “discretion.”

Thick or thin standpoints, then, are invoked as “justificatory facts” underpinning the promotion of particular kinds of conduct and of mentalities that are conducive to that conduct. They also propose different methods for administering administration based either on externally validated metrics or on capacities and conduct cohering around groups. The language of administrative ethics, in both cases, will be quite distinct both in how it conveys its focus on ends and on the means to those ends. How processes of promotion, demotion, approbation, and admonition are brought to bear on individuals will depend on how administrative bodies are situated on the line between thick and thin. What those processes communicate to workers about the institutional good will determine to a large extent how those workers define themselves as moral agents vis-à-vis their roles.

The performance of administrative ethics in its thick and thin guises, as such, is also the performance of accountability. The construction of “zones” of accountability (Dubnick and Justice 2011) depends upon the degree to which the organization is defined as an internally defined community or as a subject of externally determined discipline. It also depends on how standards are conceived and operationalized—on whether they are formulated within or beyond the organization and on whether and how they are made the subject of processes designed not only to render work legible but, through that legibility, to bring it within the boundaries of the organization’s ends.

In its institutionalized form, accountability is a matter of enforced expectations. Metrics and measures are wielded in the cause of having the interests of particular constituencies or communities or principals represented in the organizational form. Thus, being accountable is not a simple matter of being answerable for some duty or other. It is a matter of promises: it acknowledges the legitimacy of some principal in its standpoint, recognizes the mechanisms of enforcement that have been brought to bear, and inculcates mentalities that support and sustain those standpoints against alternatives.<sup>8</sup> As such, accountability is not a mere technological device. It is the lived experience of the never-ending struggle to define, control, and then maintain organizational ends. It articulates expectations about how work ought to be carried out, toward what ends, and in what contexts. As such, it seeks to act upon how individuals think about their jobs. It does so by defining ends and by aligning those ends with processes of commendation and condemnation, of promotions and interventions. Accountability, in other words, maps out a zone of behavior and in doing so is the engine that drives the institution’s positioning of individual and teamwork on the thick-thin axis.

Given this, if we think of accountability in the context of the kinds of “zone of indifference” described by Barnard (1938; see also Dubnick and Justice 2011; Stewart 1989), we ought not to think of a kind of moral neutrality. Rather, such spaces are intensely moral, circumscribed and defined as they are by ideas of the good. And while normative ideals may be defined and brought to bear through discipline (at least in the first instance), rather than emerging directly from individual “moral intelligence,” they nonetheless lend institutional ends a legitimating force that they could otherwise not have. This, in short, is the business of accountability. The thick or thin character of institutional norms reflect the everyday practice of accountability.

Accountability, then, provides the interface between institutional ends, role moralities, and the metrics and mechanisms through which institutions articulate their moral presence. The thick-thin nexus is a key part of this interface. It underpins, first, how the licenses and constraints of institutional work are conceived, and it justifies, second, the structures of power politics through which regulators or teams will seek to define and stabilize some particular institutional form.

The struggle over the institution’s normative architecture is perhaps the key tension in the practice and government of public administration. The study of administrative ethics is less a matter of studying norms than it is a matter of studying the power to administer administration. That is, we should recognize “ethical organizations” as conforming to particular (often contested) definitions of how the organization ought to conduct itself. We should recognize individual administrative ethics, by these lights, as being a matter of compliance (in the ordinary sense) with expectations arising from those definitions. As such, accountability both maps out and administers the territory of good conduct and is infused with implicit and explicit threats directed at those whose conduct is not in keeping with the organization’s defined aims.

## Two Cases

In this section we focus on two brief case studies to demonstrate the manner in which the tensions between thick and thin described above—in other words, the tensions produced by the struggle to define and control an administrative ethics—have played out in the drive for administrative reform. Our discussion of the “high-stakes” No Child Left Behind reforms in the United States focuses on a number of factors that lie behind the invocation of thin standards, achievable through metrics, primarily the interaction of teachers with the process and their developing sense of alienation from it as tension between thick and thin norms became apparent. In the case of the United Kingdom’s National Health Service reforms, we examine how local, thick, group expertise is being

invoked in pursuit of market-oriented reforms. The NHS case reveals a seeming shift *beyond* ethics as administrative groups are reconfigured as consumers, their priorities shaped by markets. We argue, however, that the NHS reforms reflect if anything an *intensified* thin administrative ethical standpoint, where though they may be delegated to organizational groups, imagined market priorities that tend to be at the heart of accountability discourses—efficiency, performance, and so on—are given center stage.

### *Case 1: No Child Left Behind: Education in Targetworld*

From the outset, No Child Left Behind represented a significant change in American education policy in two regards. First, its passage reflected a major expansion of the federal government's role in education.<sup>9</sup> Of equal, if not greater, significance has been the NCLB's reliance on high-stakes performance metrics as the preferred means for delivering this reform program. The use of metrics in American education has its roots in first decades of the twentieth century, but the passage of NCLB in 2002 represented a major shift. Not only did it involve a "scaling up" to the national level policy initiatives found in some states and localities, but also it put into effect an unproven "default" theory of education that assumed the key factor for the "success" of schooling resided in teachers (see Gunzenhauser 2003).

There were two policy related paths that ultimately led to NCLB, one following the development and application of metrics-based research to matters of education and intellectual performance (Lagemann 2000; Robarts 1968), and the other winding its way through the political maze of education reform proposals (Ravitch and Vinovskis 1995). The two paths ran in parallel for many decades, until they intersected with the emergence of test-based, high-stakes accountability systems that become the state-level education policy standard in the 1980s. Metrics previously used as indices and assessment tools were linked to decisions related to the funding or accreditation of schools, the placement or promotion of students, and the certification and compensation of teachers.<sup>10</sup> With NCLB, that approach became nationalized, with all due constitutional deference to the niceties and peculiarities of an American federalism that formally locates authority over education to the states.

Put in the context of contemporary education reform in the United States, NCLB was (and remains) an open-ended composite of state-based efforts to complete a "second wave" of reforms that began in the 1980s as critics attacked previous attempts at reform (Chubb 1988). The first wave was characterized by programmatic initiatives developed and implemented within the existing education establishment.<sup>11</sup> Focusing on funding and the adoption of basic curriculum standards, these reforms altered K–12 schooling in the United States,



but did little to enhance overall performance as indicated by the various metrics of the day. There were, however, examples of local initiatives that seemed to succeed, yet efforts to reproduce such successes in other districts or to “scale up” those reforms were blocked by structures, procedures, and “interests” inherent to the education establishment.<sup>12</sup> As a result, the second wave of reforms aimed at breaking through the institutional and political barriers to innovation and change. The adoption of high-stakes accountability systems was a major tool in carrying out that strategy.

Given the stress on improving the performance of students, the explicit rationale and logic of high-stakes accountability was initially embraced by many teachers. Playing to the core values of teachers, the rhetoric of these reforms stressed empowering classroom instructors through fostering innovation and professional development. The common enemies of both reformers and teachers were the bureaucratized administrative infrastructure of centralized school districts and the constraints they imposed on instructors, a line that, as we also see in the NHS case study, is common with metric-oriented reform. Turning the focus to results and outcomes was more attractive than obsessive concentration on procedure and constant monitoring, and teachers were willing to adjust and adapt to new realities well before NCLB was signed into law in January 2002.

Although more than half the states had adopted some forms of high-stakes accountability system prior to 2002, special attention was paid to the high-stakes approach used in Texas since the mid-1980s.<sup>13</sup> Regarded as the exemplary model for reform, at the outset it included a “no pass, no play” rule for student athletes (a powerful incentive in the sports-obsessed state), a strengthening of statewide basic skills testing for students, and test-based recertification for teachers. By 1995 the testing system had moved from assessing the minimum proficiency of students to rating the performance of schools based on the passing rates for students both in the aggregate and in disaggregated student populations reflecting specified racial and economic groups. Both cash rewards and heavy sanctions (including school closures) were tied to those ratings. The results of this effort were touted in the national media, and a proposal based on the model became a centerpiece in the presidential campaign of then Texas governor George W. Bush in 2000 (see Rudalevige 2003).

The “testing” of teachers in Texas began in 1986 when a basic literacy exam was given to more than 210,000 of the state’s teachers. A formal survey conducted two years prior by a powerful blue-ribbon committee (chaired by future presidential contender Ross Perot) found that Texas teachers believed at least 10 percent of their colleagues were incompetent. The commission also heard complaints from school administrators about the difficulties of firing

or disciplining incompetent teachers, and the media were filled with stories and narratives to support calls for action. As a result, the Texas legislature's omnibus education reform law of 1985 required teachers to take two exams, one focused on basic literacy and the other on proficiency in their subject area. Organizations representing teachers supported the new requirements, in part because they were accompanied by a substantial increase in state funding for teacher salaries, and in part due to their compatibility with the desire of many teachers to weed out the incompetents among them.

The first two administrations of the Texas Examination of Current Administrators and Teachers (TECAT) resulted in a 99 percent passage rate, but observers found the process had a demoralizing effect on teachers, who had expected a less time-consuming and less onerous test. In addition, the ongoing media coverage highlighting stories of incompetent teaching and unqualified teachers was perceived as demeaning by many teachers who saw their sense of teaching as reliant on professionalism and public standing diminished by a reform effort they initially supported. Post-test surveys and interviews noted that only 5 percent felt the process made them better teachers, and more than half stressed its negative impact on them both personally and professionally. At the same time, the survey uncovered a basic agreement that the reforms—including those focused on teacher competency—were necessary and even desirable.<sup>14</sup>

The Texas experience with high-stakes accountability is well studied and frequently debated, but its status as a model for other states both pre- and post-NCLB offers insights into the impact of such reform efforts on the ethical landscape under which public sector professionals work. Teachers initially embraced the notion of reform through greater accountability, not merely because of the pecuniary rewards it would bring to them individually and collectively, but also because the reform agenda was highly compatible with what it meant to be a professional educator. However, being subjected to the accountability demands of the reform—in this instance, being subjected to what was generally perceived as a demeaning and at times publicly humiliating testing process—proved to be a challenge (on a very personal level) to their sense of identity as members of a professional community.

To comprehend the impact of such high-stakes accountability reforms, we can consider the options facing teachers as a classic example of facing the choices of exit, voice, or loyalty (Hirschman 1970, 1980). For teachers, exiting by choice effectively meant surrendering one's thick ties with the professional community. Those who remained under conditions of loyalty were essentially choosing to adapt to the ethically thin demands of the reformist agenda. To remain as a vocal skeptic of accountability based reforms required the ethical stamina to live a life between the conflicting demands of thick and thin relationships.



Fast-forward twenty-five years from the initial Texas experience, and issues related to accountability based reforms remain unresolved at the policy and implementation levels. NCLB, up for renewal in 2012, went into its tenth year with even its supporters calling for changes (see Chubb 2009; Schneider 2011). Its critics, including some prominent former advocates of major K–12 reforms (see Ravitch 2010), have mounted a significant challenge to the policy regime based on the negative impacts of high-stakes accountability.<sup>15</sup> In light of a potential political stalemate over renewal, the U.S. Department of Education has used a variety of executive power mechanisms to reshape NCLB through grants and waivers from strict implementation guidelines to states that can demonstrate an effective effort to achieve the student proficiency objectives of NCLB by the legislated target date of 2014. At the state and local level, major efforts at school reform move ahead, relying increasingly on high-stakes methods that increasingly place the burden for “success” on schools and their teachers.

What is most important for us, however, is the way this extended process of reform has indelibly altered the ethics regime surrounding teaching and teachers. The classroom and the school are venues where one expects thick relationships to be nurtured and thrive. For teachers, such relationships have hitherto been assumed central to their professional endeavors, and it is those relationships—with students, with colleagues, with administrators, with parents and the community-at-large—that, they believe, ought to determine performance and success.

Reformers, however, perceive many of those thick relationships as obstacles to achieving the objective of student performance and proficiency. Thinning those relationships by reducing entry into the field, eliminating tenure, or modifying (if not eliminating) collective bargaining rights is perceived as corrective action, and if the result is the undermining of the teaching profession's norms and practices, so be it. For the reformers it is a matter of altering those norms and practices in order to achieve the higher goal of schooling, which is to enhance student performance and proficiency in areas deemed essential for their success and society's well-being.<sup>16</sup>

Well-funded by major foundations and supported by politicians from both sides of the partisan divide as well as sympathetic media, the American education reform movement has a momentum on the policy stage that seems to have already succeeded. Yet reformers such as Michelle Rhee and the leaders of Students First! realize that the ability to bring about real change through alterations of curriculum, governance, and sanctions will be insufficient until it undermines and/or replaces the ethical infrastructure of the teaching profession. The struggle is not for teachers to adhere to an “ethics.” It is to define what those “ethics” are taken to be.

After a quarter-century of high-stakes accountability reforms, the reformers are having considerable success but are running into resistance. Their persistence in the use of agenda-setting and policy-making powers has made exit and adaptive loyalty more inviting to many teachers, but it has also energized what reformers regard as a reactionary countermovement that is attempting to mobilize opposition to any further changes. But even if that anti-high-stakes movement succeeds, it is unlikely that it would call for a return to prereform conditions in K–12 education. The ethics of teaching have been forever altered by the power of reform.

### ***Case 2: Cultivating Consumers in Britain's National Health Service***

The United Kingdom's National Health Service was established as part of the postwar welfare state and continues to provide most health-care services "free at the point of use" for all UK residents. The NHS employs 1.7 million people, making it by some measures the world's fifth-largest employer (*Daily Telegraph* 2012). Its budget for 2011–2012 was about US\$166 billion, and it is governed broadly in line with the UK's devolved federalism.<sup>17</sup> The NHS in England, by far the largest component in the regionalized organization, treats 3 million people every week (NHS Choices 2011).

Our discussion here focuses on the reforms implemented in England and Wales through the Health and Social Care Act of 2012.<sup>18</sup> Before going into some of the act's details, it is helpful to situate it in the NHS's twenty-year "permanent revolution" (Hunter 2005, 209; see also Pollitt 2007) through which successive reform projects have sought to "modernize" the service, largely aimed, in classic New Public Management style (Hood 1991; Osborne and Gaebler 1992), at alleviating perceived deficiencies in performance produced through perceived shortcomings in accountability (see Dubnick 2005). That is, the reform attacked clinical teams as interest groups resisting efficiency and patient care.

NHS reform has always been Janus-faced, on the one side looking toward marketization in order to produce ostensible efficiencies, and on the other side looking toward centralized bureaucratic coercion as a presumed means of delivering results. Reformers have sought to introduce elements of competition into the service without the (politically unviable) option of allowing competition on price. Prime Minister Margaret Thatcher's government, finding that it could not privatize the service, introduced an "internal market" reform featuring some intra-NHS competition. This proved ineffective in terms of outcomes, not helped by the service's struggles in the face of depleting budgets. At the same time, reforms have

placed a major emphasis on delivery targets, especially on hospital waiting times, and have witnessed a rise in metrics and monitoring governed by a cadre of what Christopher Hood calls "econocrats" and "accountocrats" (1995, 94).<sup>19</sup>

All this has been matched by a broader rise in managerial "leadership," through which managerial "reform" imperatives are driven through narratives of "leadership," and provision is oriented away from ideas of citizenship and toward ideas of the citizen as a consumer of services.<sup>20</sup> The NHS, as such, has been torn between budgetary pressures and central policy requirements for two decades.

The reform cycle under Tony Blair's premiership set the scene for the current Cameron government reform efforts, hitting the English NHS on four fronts simultaneously. First, capital funding was diverted through the "private finance initiative," whereby private providers built and maintained NHS estates that were then rented by the service. Second, organizational reform saw the introduction of new levels of governance through a maze of health-care trusts, foundation trusts, all overseen by a number of regulators. Third, a series of uniform targets was introduced from the center (see Smith and Busse 2010), for instance producing a "three-star" rating for each regional health trust (Bevan 2006)<sup>21</sup> to which chief executives could be held to account. Finally, there was a major drive for the introduction of "patient choice," through which it was hoped efficiencies would emerge. Choice was predicated, as one ex-policy adviser to Tony Blair put it, on the grounds that "the absence of choice also meant an absence of incentives for providers to improve" and that, without competition "providers who offered a poor or a tardy service could continue do so with impunity; for those badly treated had nowhere else to go" (Le Grand 2006).<sup>22</sup> The division of the NHS into regional organizations allowed resources to be delegated down, and patients, in collaboration with their general practitioners (GPs, the primary interface between individuals and the NHS) were encouraged to shop around Alasdair MacIntyre between NHS hospitals for elective procedures. The hope, as expressed, was that patient choice would render hospitals and trusts accountable, would root out failures, and would encourage efficiency, innovation, and quality improvements.

The Cameron reform builds on Blair's work, in particular by combining further organizational change with a shift in the market focus of the NHS. The Cameron government's innovation lies in the sense that health-care choice may work better in a wholesale, rather than retail environment—that is, if "patient choice" is replaced by "GP choice." Patients proved to be relatively passive consumers. It is hoped that, disciplined by market forces, GPs will do a better job. Organizationally, regional trusts have

been abolished, to be replaced by GP consortia that will buy services from health-care providers (both public and private) on behalf of their patient populations.

All this is predicated on conventional “there is no alternative” narratives, positing rising costs of care and poor outcomes as the problem—although, on many measures, the NHS fares as well as European comparators, on less money—and competition as the solution (UK Department of Health 2011). At the same time, the Cameron reform’s special innovation, through the Health and Social Care Act, is that it sees itself as putting

clinicians in charge of shaping services, enabling NHS funding to be spent more effectively. Previously clinicians in many areas were frustrated by negotiating with primary care trusts to get the right services for their patients. Supported by the NHS Commissioning Board, new clinical commissioning groups will now directly commission services for their populations.

(UK Department of Health 2012, para. 6)

Doctors and nurses are to be emancipated from central control, with the reform (as Health Minister Andrew Lansley puts it) “giving them overall responsibility in each local area for the NHS budget.” For NHS organizations, the reform “means giving them operational independence from ministers in Whitehall—allowing them to focus on the results they are delivering, rather than the latest central missive from government” (Lansley 2012, 789). For Lansley, indeed, the key problem the reform is trying to solve is that

frontline staff do not have the freedom to deliver care in the way they see best. Perfectly sound clinical decisions taken by doctors and nurses are routinely frustrated by a system that is not clinically led and where trust and power are not placed in the hands of those who treat patients every day. (789)

So the reform is articulated as bringing trust and control back to local levels and to the groups that, at the New Public Management (NPM)-driven beginning of the reform era, were themselves regarded as a significant part of the NHS’s problem.

As we saw in the case of *No Child Left Behind*, much of the interaction we are interested in involves the imposition of metrics legitimated on thin ethical frameworks. Testing was predicated on a mistrust of the thick ethical frameworks through which bureaucratic groups were sustained. These teams were presumed to stand in the way of modernizing forces or were simply deemed hostile to accountability and reform where greater accountability (not,

say, budgetary pressure) was the solution to problems of performance. Team appeals to their obscure and arcane local forms of expertise were dismissed in favor of centralized standards, and organizations were reformed toward accounting and managerial imperatives privileging legibility and ultimately toward metrics imposed from outside. In the case of the most recent NHS reform, on the other hand, there is a major emphasis on the local and on group expertise being used on patients' behalf. Are we witnessing a major shift away from previous NPM reform cycles in British health care? We think not.

The Cameron reform has been met with deep skepticism, not least from within the medical profession, largely on the grounds that the marketization components in the reform will "put profit before patients" (Spence 2012), will lead to patients "being excluded from health services" (Pollock, Price, and Roderick 2012), and ultimately will "wreck" the NHS (Bailey 2012; see also Ham 2012; Hunter and Williams 2012). We see the reform less as a radical move but as situated fundamentally within the logic of NPM—Alasdair MacIntyre reform as we have set it out above.

The emphasis on power being transferred to doctors and nurses on the ground relies on the idea that doctors and nurses—the thick groups that administer public services through their expertise—have been tamed by the twenty-year reform process and, as subjects of reform, will continue to be disciplined through their new independence. Their independence, in other words, *is itself a regime*. They are to be "governed through freedom," in a sense, in that they would "enact the responsibilities that composed their liberties," having been "equipped with a moral agency that would shape their conduct within a space of action that was necessarily indeterminate" (Rose 1999, 72).

The market imperative in the reform is intended, in other words, to replace government—and to dissipate the need for the administration of administration—in the delivery of health care to patient populations. Rather than taking the kinds of centralized approach favored in No Child Left Behind or in the targets imperatives of the Blair reforms, this new iteration posits health-care workers as existing in localized consumer-producer relationships with each other. By remaking health-care markets on local grounds, characterized by competition over quality, by GPs acting in an "agency" relationship, consuming health care on their patients' behalf, and by NHS hospitals competing with private providers, the system is imagined as self-regulating.

This exercise in "cultivating consumers" is also imagined, as envisaged by the economist and philosopher Friedrich von Hayek, as being beyond administrative ethics. That is, markets, as institutions that best "encourage the discovery and communication of decentralized practical knowledge" (Gray 1998, 135), can replace questions of social justice on the outside and loyalties, fidelities, and principles on the inside (for his critique of social justice, see

Hayek 1976). Duties emerging from market forces, within this ideological scheme, will be sufficient to discipline all players. The GP consortia that do not serve patients well or are not sufficiently active as intermediary consumers of health care on patients' behalf will lose patients to their rivals. Hospitals that are inefficient or ineffective will suffer. The reform, as such, does not rely on the tensions between thick and thin. It replaces them—in its own view—with a more efficient social technology. As such, this reform does not involve a rowing back from the previous attack on thick relations and ethics. It simply assumes that they either have disappeared or are irrelevant. The triumph of this iteration of administrative ethics is that it sees itself as presiding over the withering away of ethical concerns in administration entirely.

There is a misapprehension at the core of this standpoint. While the marketization of health-care relationships is imagined as allowing a “zone of accountability” to emerge, shorn of ethical concerns but constrained by market forces, the organizational experience will likely involve the intensification of an administrative ethics narrative, in a quasi-corporate governance guise, aimed at orienting mentalities toward “efficiency,” “growth,” “accountability to stakeholders,” and “performance,” where specified outputs are construed as products and from there as outcomes (Gregory 1995). The ethical administration of conduct will continue, because people and the purposes to which they are put will still need to be monitored, performed, and controlled. It is likely that we have not escaped Hood's “accountocrats” yet (Hood 1995, 94). Attempts to detach organizational goals from “ethical” concerns, rather than simply situating work in a technocratic space, tend to fold back on themselves, with the internal imperatives of organizations simply reinvigorating administrative ethics for the new market dispensation, characterized by cost controls, by forms of corporate responsibility articulated through reputational and other forms of risk management, and by innovation and enterprise situated in market terms. The interplay of thick and thin will play out henceforth in the theater of markets.

## Conclusion

As the two cases above have highlighted, while tensions between thick and thin are inescapable, the NPM generation of reform agendas has sought to set thick relationships aside in favor of and through the enforcement of thin metrics. What is more, the invocation of ethics has to be understood not as an appeal to the good, but as a form through which particular power structures can be enforced. *Administrative ethics are a form of administration.*

While the struggle between thick and thin can never be escaped, the paths along which organizations travel are closely determined by what has gone



before. The reform agenda has its impact, whether through the metrics focus of NCLB or through the marketization of the NHS that has come through the Cameron reform. Organizational path dependencies come about not least because organizations attract and recruit workers in line with whatever ethics holds sway at some particular time. Those who are reluctant to comply either will be turned away or will turn themselves away. On this level at least, organizations and their masters choose their virtues.

Administrative ethics is not fully described by the moralist's virtues. Nor is it encompassed by the instrumentalist's designs. It is better understood as a form of, a function of, and a facility of politics. Presentations of ethics as standards to aspire to should lead us to ask "whose standards?" Behind every such appeal is a demand for the maintenance or overthrow of some organizational status quo. A call to regard administrative ethics as a matter of power is not a call to cynicism. It is, rather, an appeal to subject the bases of administrative ethics to critical analysis. Organizational life is a language of power and we must recognize that this power extends to how ideas of the good are brought to bear on and pervade administrative work. Administrative ethics is thus neither preexisting good nor simple tool. It is the very stuff of organizational politics and power.

## Notes

1. Such thinking has been key for MacIntyre throughout his career (see especially his thoughts on effectiveness in MacIntyre 1985, 73ff.; see also MacIntyre 1999). We do note that the conclusions we draw from MacIntyre's diagnosis are different from those drawn by MacIntyre himself. He is concerned with the erosion of the virtues in the face of modernity. We are concerned solely with production of administration and administrative selves through the production of administrative ethics.

2. We do not claim that the self *outside* organizational life is any less a presentation (see Goffman 1969).

3. On professional organizations, see Bucher and Stelling 1969; see also Satow 1975.

4. As we discuss below, the United Kingdom's National Health Service works on broadly federal lines. The latest reform is, at least initially, targeted at England.

5. We are following Michel Foucault's work on power/knowledge and on "governmentality" here (see, for instance, Dean 2010; Foucault 1994a, 2008; Miller and O'Leary 1987, 1994; Rose 1992; Rose, O'Malley, and Valverde 2006).

6. On virtues as skills, see Annas 2011.

7. Much has been written on this subject, not least in the fields of virtue ethics and of political philosophy (see, for instance, Williams 1985 from a virtue ethics standpoint; see Walzer 1994 for an argument on "thick and thin" from a political philosophy perspective).

8. Mark Bovens (2010, 962) has posited that there are "two concepts of accountability," one promoted as a virtue and the other offering it as a mechanism to generate compliance. These two views of accountability bear more than a "family resemblance." Virtue and mechanism are, in the institutional context, effectively the same thing in

that the mechanism is held to measure a series of products (metrics) that are held in turn to reflect the desired virtues (see Gregory 1995).

9. Historians trace national education policies back to the pre-Constitution Northwest Ordinance of 1787, which required that territorial governments set aside land in each town for public schools if they wished to be considered for statehood. While the Constitution itself makes no explicit allocation of national authority in the area of education, over the past 220 years the federal government has been increasingly involved in expanding access to education, providing funding and related support, and promoting curriculum content standards. With NCLB, however, the federal government extended its reach by focusing on educational quality and specifically the improvement of teaching.

10. On various high-stakes mechanisms, see Wohlstetter 1991.

11. The “waves” perspective has taken several forms; see also Linn 2000.

12. For an analysis of the obstacles to “scaling up,” see Bruns, Filmer, and Patrinos 2011.

13. The analysis that follows draws on Haney 2000; Shepard and Kreitzer 1987; see also Heilig and Darling-Hammond 2008; Palmer and Rangel 2011.

14. Specifics on this study, including excerpts from interviews, are found in Shepard and Kreitzer 1987.

15. For an exchange between Chubb and Ravitch, see Ravitch and Chubb 2009.

16. As an example, one of the most active and vocal advocacy groups for extending accountability-based reforms puts what it perceives as the primary purpose of teaching right in its name: “Students First!” The group’s explicit mission objectives are stated simply as “elevating teachers, empowering parents, and spending wisely.” Its policy objectives are rhetorically elevated as well: “Ending seniority based layoffs is a matter of social justice,” proclaims their website (see Castillo 2012).

17. The United Kingdom has three “devolved” regions, each with varying levels of autonomy: Wales, with very limited powers; Northern Ireland with unique powers rooted in its “peace process”; and Scotland, with more substantial powers. Strangely to American eyes perhaps, England, the largest of the UK’s nations by a large margin, does not have any self-governing institutions. The NHS has separate governance structures for each region. The UK also has three separate legal systems: England and Wales’s legal system is based on common law, as is that of Northern Ireland. Scotland’s legal system is based in Roman law. Public sector reform, following these complex institutional structures, is often targeted on England and Wales, with devolved institutions in Scotland and in Northern Ireland implementing reforms quasi-autonomously.

18. We call it “the Cameron reform,” in order to distinguish it from the previous, related cycle of reform instituted under Tony Blair’s government (“the Blair reform”) from 2002.

19. See also, for instance, Bevan and Hood 2006; Hood 1991, 1995. For an account of targets in European health care as a whole, with a special emphasis on the UK, see Smith and Busse 2010.

20. On leaderism, see O’Reilly and Reed 2010; on citizen-consumers, see Clarke et al. 2007; on choice in the NHS, see Greener 2003.

21. On targets, see also Bevan and Hood 2006; Cutler and Waine 2000; Hood 2006; McMurray 2007; Smith 2002.

22. Julian Le Grand has been active in defending this aspect of Blair’s legacy, on grounds of both efficiency and social justice (see Dixon 2009; Hunter 2009;



Le Grand 2007, 2009a, 2009b). It is unclear how his claim that social exclusion in state services can be resolved by competition between state services is to be understood. On choice in general, see the work of Ian Greener (2003, 2009) and see also Clarke 2005; Clarke et al. 2008; D. Hughes and Griffiths 2008; D. Hughes, Mullen, and Vincent-Jones 2009; Needham 2008; Newman and Kuhlmann 2007; Simmons 2011; Simmons, Birchall, and Prout 2012; Tritter 2011; Vincent-Jones 2011.

As the most recent cycle of reform was progressing through Parliament, controversy emerged in blogs, newspapers, and journal publications between health economists over the evidence base for the choice agenda. See Beckford 2011; Bloom, Cooper et al. 2011; Bloom, Propper et al. 2011; Cooper 2010; Cooper et al. 2010, 2011, 2012; Gibbons 2012; Pollock, Macfarlane et al. 2011; Pollock, Macfarlane, and Greener 2012; Pollock, Majeed et al. 2011; Ramesh 2011. Methodological debates aside, it should be noted that the evidence produced by Cooper et al. was focused on the Blair reform, rather than on the 2011–2012 proposals, so provides lessons about competition between state hospitals under a regime supposedly driven by “retail” consumption, whereas the Cameron reform introduces both private providers and a more “wholesale” mode of consumption by GPs’ consortiums.

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## **Part II**

### **Reassessing Corruption in the Twenty-First Century**



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## Searching for Virtue in the Public Life

*H. George Frederickson*

The burden of my claims here is that virtue in the public life is less likely to be found in a clearer understanding of virtue and more likely to be found in a clearer understanding of the public life. With a clearer understanding of the public life, I shall further claim, virtue is to be found not so much in the abstractions and theorizing of higher philosophy but in “vulgar ethics,” Lewis C. Mainzer’s (1991) brilliant description of moral education in the classroom and street-level moral practice in the department and the agency. Finally, I shall claim that the hope of virtue in the public life is to be found not just in the individual propensity to be ethical but more so in the development of organizational rules and procedures, in virtuous leadership, and in the development of virtuous public cultures.

We start, then, with the claim that to find virtue in the public life we should turn first to a consideration of the public life. Those who founded the field were wise to label it public administration rather than government administration. Public is the larger idea, the pregovernmental idea. Jurisdictions of government float in a vast public sea. And just as governments float in a vast public sea, so, too, do nonprofit organizations, churches, businesses and corporations, tribes, clubs, networks, and all other human collectives (Frederickson 1997). Some human collectives have rather distinct governmental characteristics—boundaries, laws and constitutions, authority, claims of sovereignty, and, notably, hierarchies and bureaucracies. As Weber teaches us, complex human collectives, particularly those that endure, always have authority hierarchy and bureaucracy—churches and corporations, for example. Strictly speaking, such human collectives may not be governments, but they are certainly

public (Weber 1962, 60–68). And, as Bozeman (1987) teaches us, all such organizations are public, but each is differently public.

Distinctions between government and public may not have been particularly important in the early years of modern American public administration because the field was so closely identified with government and particularly with government reform. It is important to note here that the early close connection between public administration as a field and the government reform movement had a great deal to do with ethics, particularly the logic of a merit-based civil service as an alternative to political spoils, the almost universal adoption of auditing and accounting procedures, and tighter controls over government procurement and contracting. On looking back, it is clear that both the study and practice of public administration ethics were rooted in jurisdiction-based government reform. But by the middle of the twentieth century, the momentum behind the government reform movement in the United States began to weaken. As a field, public administration has been slow to respond to the declining salience of government reform and, in my view, particularly slow to respond to rapidly changing public contexts and to the ethics challenges found in those changing contexts.

In the past forty years, the growth in the variety and extent of the alternatives to general-purpose American city, county, state, and national governments has been impressive. Consider, for example, single-purpose jurisdictions, such as school districts and the wide range of alternative forms that have been recently experimented with—charter schools, vouchers, test-based performance measures of school quality—all alternatives that essentially reduce the obvious governmentalness, if not the publicness, of school districts. Consider the gas, electric, and other power utilities, and particularly the corporate or so-called shareholder-based utilities and their very successful image as models of private enterprise. In fact, of course, power utilities are public monopolies. Rather than “citizens” or “residents,” utility customers are in fact “customers without choice,” reduced to that noble description “ratepayer.” The number of single-purpose special district governments has increased significantly. The growth of so-called public-private partnerships, essentially publicly funded or subsidized commercial enterprises, has been phenomenal. The growth of quasi-governmental organizations in the United States or “quangos” in Europe is equally impressive (Koppell 2003).

Jonathan Koppell offers a brilliant analysis of twenty-five nongovernmental international bodies that he describes as “global governance organizations,” including the European Union, the International Labor Organization, the Universal Postal Union, the World Trade Organization, the World Wide Web Consortium, the International Accounting Standards Board, the World International

Property Organization, the International Organization for Standardization, and, recently in the news, the International Corporation for Assigned Names and Numbers. In his book *World Rule: The Politics of Global Governance* (2010), Koppell analyzes the authority, legitimacy, and accountability of these organizations. Finally, much of what is described as the so-called extended state or third-party government is corporate and profit-making.

I insist that all of it is public. But certainly not all of it is, strictly speaking, governmental or even quasi-governmental. Indeed in international parlance, all such organizations tend to be lumped together under the label NGO—nongovernmental organizations. Welcome to the new “state of agents.” The “public life” of 2013 is very different from the public life of, say, 1995. Does public administration ethics, rooted as it has been in jurisdiction and general-purpose government, have anything to contribute to the ethics challenges in this brave new world of alternatives to traditional jurisdiction-based, general-purpose governments?

Fast forward to 2013. The era of big government is over, having been replaced by the era of really big government. But modern American government is differently big. There are many names for it—third-party government, the hollow state, the shadow bureaucracy, the blended public workforce, the extended state, articulated chains of third parties, steering rather than rowing, the state of agents, and, perhaps most common, governance. American governments at all levels have moved steadily in the direction of taking managerial and service-delivery functions out of the hands of civil servants and putting them in the hands of nonprofit and for-profit third-party contractors and grantees. Paul Light (1999) estimates that the federal civil service has shrunk by nearly 25 percent in the past twenty-five years, while the federal contract workforce has more than doubled. For every non-uniformed federal employee, there are now more than seven contract employees. It is estimated that, all told, there are more than 17 million persons in the modern federal “extended workforce.” There were as many contract employees in Iraq and Afghanistan as there are GIs. Such are the realities of contemporary public life.

The public administration activities now being done by third parties are astonishing. In some jurisdictions, core administrative functions such as human resources management, payroll, budgeting, information technology, and record-keeping are now referred to as back-office functions and are contracted out. It was recently announced that the U.S. Office of Personnel Management is going to contract out its own personnel administration. Large-scale weapons systems in the U.S. Department of Defense are now routinely managed by a contractor that, in turn, contracts with other firms to implement parts of the weapons systems, and these contractors, in turn,

subcontract much of their work. It is estimated that between one-third and one-half of the revenues in the budgets of the American states are actually federal dollars granted (or contracted) to the states to carry out federal programs, such as drug and alcohol rehabilitation, parts of Medicaid, and job training—essentially outsourcing federal policy implementation to the states. The states, in turn, outsource many of these activities to their counties, and both the states and the counties, in turn, contract with private and nonprofit organizations to do the actual work. Using an interesting legal claim known as extraordinary rendition, the CIA evidently outsourced to Egypt and other countries the incarceration, interrogation, and torture of suspects its agents picked up in other countries. Italy has just convicted more than twenty CIA operatives for engaging in this practice.

The rise of the modern extended state is the dominant feature of our public life and of contemporary public administration. Earlier distinctions between governmental and public institutions, on the one hand, and private (familial), professional, and business institutions, on the other, no longer hold. Contemporary institutions function along a dynamic continuum of shades of publicness ranging from clearly public to only slightly public, a continuum upon which a particular institution's place is not fixed, but fluid. Consider, for example, General Motors and Chrysler.

Closely associated with the rise of the modern extended state has been the changed nature of governmental regulation of business and corporate practices. Ours is an era of the deregulation of business and corporate self-regulation. Students of the history of business-government relations will recognize that we are in an era ripe with issues of corporate ethics. The recent recession is, I submit, richly illustrative of the downside of corporate and banking deregulation. The assumption of trust once associated with the grand old public accounting houses such as Arthur Andersen is gone. The accounting ethics crisis has reduced what was once the "big eight" to the "final four."

Public management via contracting out and grant-making has grown so rapidly and so significantly that the contracting practices of modern governance have gotten far ahead of our capacity to build either explanatory theory or theory that helps government officials organize or manage more effectively. Likewise, the growth of corporate deregulation calls not just for greater regulation but for empirically based theory to better inform practice. To paraphrase Todd LaPorte (1994, 11–14), public administration by contracting out and grant-making and by corporate deregulation may work in practice but certainly does not work in theory.

At the outset I claimed that to search effectively for virtue in the public life, we must first explicate our understanding of modern public life. Having done that, let me turn now to the search for virtue in public life.

## Searching for Virtue

Public administration ethics during the early government reform era is associated with a well-known list of accepted standards, agreed-upon assumptions, and preferred practices. Let us call this list the traditional public administration ethics canon, or simply the canon. The canon includes claims regarding

- Prohibitions against conflicts of interest
- Merit-based appointment and promotion as an alternative to political spoils
- Public office as a public trust
- Formal adoption of ethics rules
- Objective and transparent procurement and contracting procedures
- Standardized internal accounting and auditing protocols and annual external auditing
- Institutional and professional codes of ethics
- Clear lines between day-to-day professional administration and political office-holding, particularly electoral or campaign politics
- Prohibitions against nepotism
- Prohibitions against bribery
- Fair and equal treatment of citizens
- Ethics training
- National Association of Schools of Public Affairs and Administration Commission on Peer Review and Accreditation requirement that a Master of Public Administration degree includes ethics education
- Prohibition against the use of public property or time for personal or political purposes
- Encouragement of and support for whistle-blowers

There are, of course, many more things that could be included in the canon.

Did the canon work? Did we find virtue? Mostly yes. By the 1970s, as a result of the widespread adoption of most of the elements of the canon, American government at all levels was more honest and ethical than it had been at the beginning of the century. But did we pay a price? Yes. The full application of the traditional ethics canon slowed government down, focused on what should *not* be done rather than what *should* be done, filled government with procedural red tape, did little to reduce corruption at the political and electoral level, tended to focus on small or petit ethics (the misuse of computers, cars, expense accounts, and cell phones), leaving big ethics issues (goal displacement) or naughty ethical issues (what to do about poverty or the homeless) untouched (Anechiarico and Jacobs 1996).

To summarize, by the 1970s the widespread application of the traditional canon of public administration ethics had enabled us to find virtue, but mostly in small things. It was, however, big events and big ethical issues that punctuated the 1970s—political assassinations, an unpopular war, urban riots, an impeached president. In the context of these and other large-scale events and movements, American public administration, however it might have earlier been associated with ethical administration, seemed badly out of touch. As those associated with Minnowbrook I and with the so-called new public administration claimed, the public administration of the 1970s seemed adrift and irrelevant to the important ethical issues of the day (Frederickson 1980).

In the last quarter of the twentieth century, the government reform basis of public administration was challenged on multiple fronts. Rational-choice, market-model economists found bureaucracy to be inefficient and regulation to lessen the effectiveness of business. The reinventing-government movement likewise found bureaucracy wanting and favored contracting out most public services to businesses. Customer-based government, it was claimed, would work better and cost less. The so-called New Public Management emerged, combining market economics and reinventing government. What began as program evaluation evolved into an influential performance measurement movement. And the word *accountability* came increasingly to be used to describe a rather new approach to ethics. At the time, many in the practice of public administration embraced these movements. A few professors, myself included, argued that downsizing, contracting out, and deregulation would, in the long run, be a recipe for both ineffective government and corruption. Such warnings are, after all, what professors do. That is why we have tenure.

Public administration is now part of a considerably different public life, a new life of highly influential public but nongovernmental institutions, many autonomous and semiautonomous quasi-governmental institutions, many single-purpose governments often financed by fees for service rather than general revenues, increasing percentages of governmentally financed work being done by nonprofit and corporate agents, and elaborate patterns of formal and informal interjurisdictional collaboration and cooperation in the so-called new geogovernance.

I have claimed that the canon of traditional public administration ethics, rooted as it is in general-purpose governments and in early government reform, is not adequate to the task of bringing ethical virtue to this new governance. If that is so, and if necessity is the mother of invention, the necessities of contemporary public life call for the invention of a body of public administration ethics better suited to our times. For purposes of simplicity, let us call it public administration ethics in the era of governance (rather than government).

What might be the elements or components of public administration ethics in the era of governance?

First, while perceptions of government and particularly of big government are not particularly good, perceptions of "publicness" and particularly "grassroots publicness" are rather good. For example, the cluster of fashionable concepts and ideas such as civil society, social capital, community, civic engagement, and citizen participation associated with David Mathews (1999), Theda Skocpol and Morris Fiorina (1999), and Robert Putnam (2000) are promising. Closely associated with the civic engagement advocates are those working on both individual and institutional cooperation and collaboration, including Robert Axelrod (1984), Robert Agranoff and Michael McGuire (2003), and many others in public administration. And, perhaps most interesting, Elinor Ostrom (1990) was awarded the Nobel Prize in Economic Science for her work on the commons and particularly her demonstration of the several ways that the so-called tragedy of the commons can be avoided. All these versions of grassroots publicness seem to come to about the same conclusions—that effective "publics" have trust, make and enforce rules, build structures, practice reciprocity, and have cultures of ethical leadership. Governments, and particularly local governments, are only a part of this grassroots publicness.

Public dependence on our high-reliability systems, such as commercial air travel, the provision of electricity and gas, and electronic and particularly digital electronic communication, such as television, radio, and the Internet, is so ingrained that we do not handle well any lapses in service. Again, governments are part of these public high-reliability systems, but only a part.

In between the grassroots and high-reliability systems are a wide variety of public services and functions, some distinctly governmental, such as the criminal justice system and the educational system; others, such as national defense, very mixed; and others, such as the health-care system, very much in play.

From the standpoint of ethics, the issue, then, is not the degree to which a particular system is governmental, but the degree to which it is understood to be public. The more a system is thought to be public, the more the public will expect that system to be ethical.

The public administration task, then, is to take the lead in identifying the various organizations and professions in each public system and in bringing those organizations and professions together around the subject of ethics.

By now it will have been noticed that I have given little attention to public administration ethics scholarship. While I have contributed to that scholarship over the years, I have come more recently to identify with the vulgar ethics perspective. I have no quarrel with the study of ontology or, for that matter,



deontology, or the study of moral idealism or of utilitarianism, or claims being made about either dirty hands or many hands, or the ethics of regime values, or even the further study of my own beloved arguments about the patriotism of benevolence. All add to the body of ethics knowledge. Knowledge of these things helps us to know about goodness. But, as Lewis Mainzer argues, we can study goodness and we can teach about goodness, but can we actually teach goodness? He asks this question: Can study, research, and teaching induce moral change in ordinary people?

Mainzer writes:

Socrates wondered, Who are they, having been inferior people, who have now become under your care good and noble? If, so far as one can estimate, churches and priests fail as often as not in truly gentling human nature, whether or not they work aided by the authority of schools or with heaven or hell in their armament, why should schools and professors expect to do better? We may induce a sense of moral exhilaration in the classroom, but evil one day insinuates itself in so prosaic a form that there is no time for warning. Or one seeming good conflicts with another, or embrace of a partial evil is necessary to avoid a worse . . . Teachers may seek to be moral guides, but we can at best be confident of our professorial ability to convey a bit of knowledge.

Nevertheless, we persist out of faith.

Whatever one's sense of the connection between knowing the truth and being good, all of us must be uneasy with any supposition that learning philosophy or being able to discuss the pros and cons of a basic issue, leads to virtuous action. Following the advice given by Mark Lilla twenty-five years ago, when it comes to the practical and applied issues of ethics, we should "send the philosophers home," for their theorizing is too abstract. We should admit that moral education would take place, much as it always has, through examples, through families, and even a bit of indoctrination.

(1991, 4–5)

Instead, Mainzer suggests vulgar ethics or, put more gently, common ethics or ordinary ethics. This is the public administration ethics of putting rules, regulations, and red tape in place to keep bureaucrats from behaving badly. This can be done without a discourse on Hobbes and his philosophy of human nature. This is the public administration ethics of operating trust-based, relational contracting systems without a discussion of Rousseau and his philosophy of human nature. This is not the disembodied consideration of public morality. It is, instead, the fully contextualized application of policies, procedures, and so forth, set out earlier in the description of the canon of public administration ethics developed in the government reform era. And

it is the reason that an understanding of the contextual characteristics of the present era of governance and the extended state is essential to the building of a public administration ethics suited to it.

Vulgar ethics suggests the use of ordinary cases, examples, or models, rather than extraordinary cases. The recent excellent work of Steven Maynard-Moody and Michael Musheno comes to mind. In their *Cops, Teachers, Counselors*, (2003) they describe how and why street-level bureaucrats make moral choices in the face of scarce resources and high variation in the legitimacy of client claims. Using standard ordinary cases, they describe how vulgar ethics works. An understanding of the ethics of ordinary cases demonstrates why a too great focus on aberrant cases results in aberrant ethics standards.

Finally, those who study ethics will have found in these remarks a decided emphasis on institutional and organizational forms, on rules and regulations, on organizational behavior. Put another way, I have purposely chosen not to emphasize individual moral and ethical choice and not to consider those forms of public administration ethics that rest on individual moral choice claims. This is out of my conviction that most public administrators will, most of the time, make moral choices. For those tempted to be unethical, there must be policies, rules, regulations, oversight, audits, and other forms of institutional arrangements to help them be virtuous.

As you can now see, I am an unreconstructed vulgarian.

## Conclusion

To find virtue in the public life, start first with a full understanding of the public sector broadly defined. With that broad understanding of the public sector, turn to matters of ethics and morality in the collective sense rather than as matters of individual moral choice. Insist that the consideration of ethics and morality in the public sector include government but, more important, also include all the institutions and organizations that are public and have public obligations. Employ the full canon of ethics protocols as you build ethics into the modern public sector. Send the philosophers and the Sunday school teachers home. Reach for collective virtue through the application of vulgar ethics.

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## Oversight and Accountability in Contingency Contracting

### Ethical Management in a Conflict Zone

*Frank Anechiarico and Gjalt de Graaf*

[T]he practice of employing irresponsible parties, having no official connection with the government, in the performance of public duties, which may be properly performed by regular officers of the government, and of purchasing by private contract supplies for the different departments, where open and fair competition might be properly invited by reasonable advertisements for proposals, is injurious to the public service, and meets the unqualified disapprobation of this House. (U.S. House Committee on Government Contracts, 1861; quoted in Bolles 1886, 231–235)

Much has changed during the last generation in the way Western governments provide services. As Christopher Hood relates, “Thirty years ago, many capitalist states directly owned and operated a wide range of production facilities . . . Outsourcing has replaced insourcing across a range of functions and states have moved from a ‘making’ to a ‘taking’ role in many areas . . . Indeed, what would once have been seen as core state functions . . . —like the running of prisons—are coming to be part of an outsourced contract sector” (1996, 120). This process was influenced by the so-called New Public Management (NPM) movement (e.g., Hood 1991; Osborne and Gaebler 1992), which discredited the ability of government agencies to produce public goods and services efficiently; the choice to move as many government functions as possible into the private sector was considered a necessary reform. NPM

took different forms in different countries, but its general principles underlie the rapid growth of outsourcing.

The public values that Beck and Bozeman (2002) mention that play a role in debates on outsourcing include accountability, regime stability, transparency, social cohesion, and user orientation. Another public value often mentioned in this regard is public responsibility (closely related to accountability). As Fritz Mosher puts it, "One does not diminish one's responsibility by paying someone else to do the work, as the *Challenger* disaster shows" (cited in Milward and Provan 2000).

The military is an area where outsourcing has increased considerably. In Iraq the highest number of private service providers ever was recorded in 2007, about 180,000, though no one seems to know exactly how many, not even the Pentagon (AIV 2007). At the beginning of the 1990s, during the liberation of Kuwait, the ratio of soldiers to private contractors was about 50 to 1. In 2007 in Iraq it stood at roughly 1 to 1 (AIV 2007). The Dutch were for a long time very reluctant to contract in conflict zones but have increasingly relied on private service providers in Afghanistan (Van Leeuwe 2008).

The use of contractors by NATO governments engaged in the conflict in Afghanistan raises critical ethical questions for the theory and practice of public administration. As the number of private contractors has increased to equal—and, regarding U.S. involvement, surpassed—the number of military personnel in both Afghanistan and Iraq and as they take on functions "traditionally" performed by public entities, the primary question focuses upon the extent to which operations in either country retain the sovereign identity and remain under the sovereign control of the funding governments (Schwartz and Swain 2011). Conversely, concern arises as to whether contingency contracting has brought about the privatization of significant aspects of military operations and foreign policy. This record of contingency contracting (in conflict zones) reveals an expanding gray area between public and private, between sovereign identity and private prerogative, in which public ethics and civic values are largely absent. The result is a free-floating zone of uncertainty, where the ever-larger disbursement of public funds is met with increasingly inadequate regulation and assessment.

The Dutch Advisory Council on International Affairs (or Adviesraad Internationale Vraagstukken) summarized the legal and ethical problems with large-scale contingency contracting in a discussion of private military contractors (PMCs):

Besides the fact that PMCs are a means of reaching political objectives, they also enable governments to circumvent political constraints, such as political or other limits on military action. They thus help to increase the govern-

ment's flexibility. The drawback, however, is that they can—intentionally or unintentionally—obscure the government's true objectives. This makes it difficult to exercise democratic control, primarily because it is often unclear who is responsible for what . . . In situations involving the deployment of regular troops, by contrast, political responsibility and legal liability are clear-cut. Incidents involving PMCs and casualties among PMC employees make the news less frequently and are often not included in official statistics. For example, the fact that approximately 1,000 contractors have been killed in Iraq in recent years has received much less coverage than the number of soldiers that have been killed (approximately 3,500). (AIV 2007)

While security contracting has commanded much public attention devoted to conflict-zone contracting in Southwest Asia, it is a significant, although a relatively small, part (about one-tenth) of the more than 200,000 contractors at work in Iraq and Afghanistan. In order to clarify the ethical challenges posed by outsourcing military and other public functions in a conflict zone, this discussion will consider the following questions related to the system of contingency contractor accountability, in the context of NATO operations in Afghanistan conducted by the United States and the Netherlands:

1. What is the nature and extent of inspection and oversight of contingency contractors (those operating in conflict zones) in Afghanistan and how do inspection and oversight differ among partners in the NATO alliance?
2. What internal controls are in place in contingency contractor organizations, from the largest, diversified corporations to specialized purveyors?
3. What sanctions are in place to define and enforce standards of accountability for contractor misconduct?
4. How does the long-term, widespread use of contingency contractors in Afghanistan influence administrative ethics in the United States and the Netherlands?

These questions lead us to use a basic-systems, theoretic analysis of the ethics of contingency contracting in Afghanistan. Our sources include available public documents, political discussions, and interviews within the Dutch Ministry of Defense.<sup>1</sup>

Question #1 considers inputs to the system of accountability. These entail the nature of the bid process, the work and product specifications in the contract, the routine of work and product review, and the nature of oversight exercised by public agencies other than those that are parties to the contract.

Question #2 examines procedures and standards in the contracted organization, both those predating the conflict zone contract and those designed for the work in Afghanistan, particularly. Question #3 focuses on outputs—in this case, behavior considered in conflict with the mission of the contracting organization. In some instances, the questionable nature of outputs will be recognized by the contracting agency. In others, these problems will be detected through investigations conducted by noncontracting public agencies or journalists and other nongovernmental organizations. Question #4 examines the effect of the contracting relationship on the ethical environment of government.

## **U.S. Inspection and Oversight Regime**

### ***The U.S. Rules***

According to the Organisation for Economic Co-operation and Development (OECD) (2005), about 50 percent of the Dutch governmental services and about 70 percent of the American are outsourced. These figures make it reasonable to speak of the “hollow state” (Milward and Provan 2000). The high level of outsourcing in the United States and the Netherlands raises an immediate problem for inspection and oversight. What is the nature and extent of public goods and services that can be provided by private parties, while still allowing for oversight and accountability commensurate with expenditures and the risk to sovereign authority? Without understanding “what’s in and what’s out,” the capacity and resources devoted to oversight and inspection cannot be evaluated.

Both the United States and the Netherlands set out statutory definitions that attempt to deal with the demarcation between the public and private sectors. In the U.S. Code, Federal Acquisitions Regulations (FARs) make a distinction between those functions that can be outsourced and those that are “inherently governmental functions” (IGF). However, the lists, though long, raise more issues than they address. What deference should be shown by uniformed military personnel to private security contractors who take control of a supply route while moving diplomatic personnel in a conflict zone? Contracts awards are not to be outsourced, but what about performance evaluation in advance of contract renewal? Perhaps not a “determination” of budget priorities, but what is the status of outsourced analysis used in budget requests? Does the employment of contract interrogators (as at the Abu Ghraib prison in Iraq) turn over “control of intelligence” to the private sector?

The preface to the two FAR lists includes the disclaimer that the “list is not all inclusive” (FAR 7.503(c)) and, importantly, that “[a]gency decisions which determine whether a function is or is not an inherently governmental

function may be reviewed and modified by appropriate Office of Management and Budget officials" (FAR 7.503(b)). Of particular note here is the exchange over a period of years among the U.S. Office of Government Ethics, the Office of Management and Budget (OMB), and the Government Accountability Office (GAO). The exchange centers on the role of ethical standards as an increasing number of public functions are outsourced. The Ethics Office, relying on studies done by GAO and its own legal analysis, raised concerns in 1999 and 2002 about what it refers to as a "confusion" of ethics standards if IGF is defined too narrowly. In particular, the Ethics Office argues against the practice of contracting out the job of "designated agency ethics official" (Glynn 2002, 4). The office makes this argument in an advisory memorandum to the OMB Office of Federal Procurement Policy, since it does not have the power of sanction and mandate.

While outsourcing ethics oversight is an eye-catching feature of the current federal management system, it is perhaps just the tip of the iceberg. OMB circular A-76, as revised in 2003, establishes an outsourcing presumption. In a letter to the OMB, Marilyn Glynn of the Ethics Office refers to the "revised circular's requirement . . . that agencies presume that all activities are commercial in nature unless an activity is justified as inherently Governmental" (Glynn 2002, 3). The presumption is buttressed by statutory law in the Federal Activities Inventory Reform Act (FAIR) of 1998, which gives "interested parties" the legal right to challenge any exception to the outsourcing presumption. Interested parties include anyone who makes an "actual or prospective" offer to "perform the activity" (FAIR 3(b)1).

The OMB circular neglects to mention the usual proviso that contracts be let to "responsible" bidders (though FAR does), and, in a 30,000-word document, mentions ethics in a brief formula with regard to new, streamlined contracting provisions: "Agencies shall . . . [c]omply with procurement integrity, ethics, and standards of conduct rules, including the restrictions of 18 U.S.C. § 208 [regarding "acts affecting personal financial interest"], when performing streamlined and standard competitions" (OMB 2003, rev. sec. 4(e)).

It should be noted that the baseline ethical standards referred to in the circular apply to government personnel and not to contract employees. So when retired admiral Dennis Blair recommended, in his capacity as a Defense Department contractor, that the F-22 fighter jet program be extended, his substantial stock holdings in one of the companies that would directly benefit from the extension did not violate the law. As Kathleen Clark points out in relating this story, "government contractor employees may routinely be giving advice that is tainted by conflicts of interest" (2011, 32). Part of the FAR does prohibit organizational conflicts of interest (OCI), but Clark points out that relevant law and regulations provide no guidance for the implementation



of the OCI prohibition and that while the “onus of identifying OCIs is on the contracting officer prior to an award, . . . the government is not required to monitor OCIs after the award of a contract” (Clark 2011, 24).

The oversight and inspection regime contemplated in the OMB circular is defined in broad terms, with no specific assignment of duties or responsibilities:

[A]n agency shall (1) monitor performance for all performance periods stated in the solicitation; (2) implement the quality assurance surveillance plan;<sup>2</sup> (3) retain the solicitation and any other documentation from the streamlined or standard competition as part of the competition file; (4) maintain the currency of the contract file . . . ; (5) record the actual cost of performance by performance period; and (6) monitor, collect, and report performance information. (OMB 2003, Attachment B (E) 4)

The required evaluation centers on a performance work statement (PWS) developed by a team of “technical and functional experts” from the public and private sectors. The PWS is used to assess performance once the contract has been let. A separate team of technical and functional experts (“to avoid any appearance of a conflict of interest”) monitors specifications that are part of the tender. This is the most efficient organization (MEO) team.

The standards and technical metrics developed by the MEO and PWS teams are implemented by agency management and more formal oversight officials, most prominently agency and GAO auditors and the inspector general with authority over the contracting agency. As far as guidance regarding ethical violations or other misconduct, the OMB circular provides some instruction on the conditions under which contracts can be terminated, for reasons other than failure to perform:

If an agency determines that performance by a service provider . . . is to be terminated for reasons other than failure to perform, the CSO [competitive sourcing official] (without delegation) shall approve such terminations, in writing, and provide a copy to OMB before the termination. Examples of these terminations include, but are not limited to, elimination of an agency requirement through divestiture, privatization, reorganization, restructuring, national defense, or homeland security. (OMB 2003, Attachment B (E) 6b)

### ***The Dutch Rules***

A striking difference between the American and Dutch statutes and regulations guiding contingency contracting in Afghanistan becomes evident in the brevity of the Dutch rules and the extent to which they allow discretion to

operating officials. Reporting—a key element in any oversight scheme—is described as follows in the relevant Defense Ministry decree on contract conditions:

4.3. The contractor and the principal shall consult with each other on the work progress as often as either party desires. At the request of the principal, the contractor shall provide the principal with a written report on the progress of work.<sup>3</sup> (The Netherlands, State Secretary for Defense 1999)

However, it should not be assumed that the regime in the Netherlands is at all lax. As the Defense Ministry explains in a general introduction to its contract operations, all procurement is governed by its own regulations and those specified further by

- European public procurement regulations
- the national procurement regulations for public works
- the provisions of the Public Administration (Probity in Decision-Making) Act (BIBOB)
- the code of conduct of the European Defense Agency

BIBOB, administered by the Justice Ministry, investigates all bidders to screen out those with any history of fraud or “professional misconduct” (Reimer 2006). The number of contracts disallowed on the grounds specified in BIBOB regulations has been between ten and fifteen for all Dutch government procurement.

### **The Ethical Environment in Afghanistan**

The government of the Islamic Republic of Afghanistan was established in the wake of the U.S. allied invasion of Afghanistan, which began October 7, 2001. Kabul fell five weeks later; after a hastily convened meeting of “factions opposed to the Taliban” in Bonn, Germany, the United States, NATO, and the United Nations put in place an interim government headed by Hamid Karzai, an ethnic Pashtun from a family that was politically prominent in the pre-Soviet era. NATO’s effort to install and maintain the Karzai government is not only a major dispute in the ten-year war, but a critical determinant of the ethical environment of contingency contracting and much else associated with the presence of foreign troops in Afghanistan.

U.S. Agency for International Development (USAID) assessed the level of corruption and the Afghan government’s commitment to raising the level of public integrity in a March 2009 report. It is a bleak picture:

Pervasive, entrenched, and systemic corruption is now at an unprecedented scope in the country's history. Thirty years of conflict that has weakened underdeveloped state institutions and the country's social fabric, Afghanistan's dominant role in worldwide opium and heroin production, and the tremendous size and diversity of international security, humanitarian and development assistance all increase Afghanistan's vulnerability to corruption. (USAID 2009)

Mohammed Zia Salehi, a close aide and adviser to President Karzai and chief administrator of the Afghan National Security Council, was arrested in July 2010 for accepting the gift of a car in exchange for interfering with the investigation of a massive money-laundering operation. After the arrest by U.S.-backed Afghan investigators, Karzai put pressure on Attorney General Mohammed Ishaq Aloko, who then ordered Salehi's release. A few weeks later, the *New York Times* reported that Salehi "appears to have been on the [CIA] payroll for many years"—a fact that complicates, if it does not entirely defeat, the ongoing effort by the United States, NATO, and other donor governments and NGOs to persuade the Afghan government to pursue corruption seriously and systematically (Filkins and Mazzetti 2010).

The arrest of Salehi was part of a campaign by senior prosecutor and deputy attorney general Fazel Ahmed Faqiryar. Faqiryar and his staff had opened and publicized corruption cases "on 25 current or former Afghan officials, including 17 members of Mr. Karzai's cabinet, 5 provincial governors and at least 3 ambassadors" (Filkins and Rubin 2010). Karzai refused to authorize prosecutions of any of the targets and, in late August 2010, he fired Faqiryar.

Among the cases that were blocked by Karzai was the charge of extortion against Khoja Ghulam Ghaws, the governor of Kapisa province, who demanded kickbacks from contractors working in his jurisdiction, as alleged in depositions by contractors and aid officials (Filkins and Rubin 2010). But rather than being recycled into the local economy, money siphoned off from contracts and government appropriations or garnered from favors for the CIA surfaces in Dubai. *Der Spiegel* reports an estimated \$3 billion in cash has been converted into villas on artificial islands in the Persian Gulf (Koelbl 2010).

## **Deployment Contracting Ethics and Regulations in Afghanistan**

### ***The Dutch Task Force***

Although a Dutch military task force was originally stationed in Uruzgan in southern Afghanistan in August 2006, its mission was extended for another

two years. In February 2010, the Dutch coalition government fell over the decision whether to stay in that country after August 2010. As a result, no new decision to extend the stay in Uruzgan could be taken and thus, in July 2010, the last Dutch troops left Afghanistan.

This example largely speaks to the decentralized and contextual nature of military contracting decisions in the Dutch setting. To elaborate, we would first point out that, although there are many types of contractors generally, military contractors are differentiated between security contractors (“those with guns”) and logistics contractors (“those without guns”) (Isenberg 2006). The Dutch Ministry of Defense states that in general it chooses outsourcing because it “brings in outside parties in service provision if that helps to achieve goals or reduce costs” (2008, 2), so effectiveness and efficiency are the official reasons to outsource. The Dutch Ministry also states in its “sourcing strategy” that no two situations are the same, and therefore it is not possible to define standard solutions for standard situations and determine *a priori* when to outsource and when not. The decision whether to outsource is thus deliberately decentralized because most relevant information depends upon the circumstance.

Public information about the private organizations that partner with the Dutch military is scarce and fragmented. “Like its US counterpart, the Dutch government thus seems unable to provide any information—either positive or negative—on the cost effectiveness of using contractors instead of military units” (AIV 2007).

The most important areas of contracting by the Dutch army in Afghanistan involve catering, food and fuel supplies, vehicle maintenance, and armed security around Dutch bases. Davids, Beeres, and Van Zitteren (2009) distinguish the categories “facilities management,” which includes catering and removal of trash; “maintenance and logistics,” which includes transportation of goods and people and maintenance of vehicles; and “security,” which includes securing bases and transports.

The Dutch outsourced catering and base security primarily to stay within the political constraint of a 1,500-soldier limit in Afghanistan. Within the Netherlands, the Dutch cooperate with the private caterer Paresto, but civilian personnel cannot be employed in mission areas because of the dangers involved. In Afghanistan the Dutch therefore contracted another party, Supreme Foodservice AG (Voetelink 2007), which had been serving the American army. Supreme was responsible for the transportation between Dutch camps, as well as for food. Such transports were impossible without hiring private security companies.

For the security in the outer perimeter of two camps, Deh Rawod and Tarin Kowt, the Dutch hired a PMC called Afghan Security Guard (ASG) (Voetelink

2007), also used by the United States. If the Dutch were to insource catering, it would mean employing between 200 and 300 men and women. ASG was also hired because not doing it would be a significant security risk. As one of our interviewees said, "These armed men worked for three years with the Americans and thus had three years of experience and much knowledge about the camps. If the Dutch had not hired them, these motivated armed private guards could have easily switched to the Taliban or other militant groups in the area." Another interviewee said, "These are very good guards. What we do not want is them to turn against us."

Vehicle maintenance was largely contracted out to local civilians. When the Dutch came to Afghanistan, they concluded that they were in need of new armored vehicles adapted to the Uruzgan terrain, so they purchased a number of Australian Bushmasters. Since these vehicles were new to them, the Dutch did not know how to maintain them. Given the time limit upon the Dutch mission in Afghanistan, training their own personnel with the risk that in a few years the vehicles would be redundant and resold was not a viable option.

Private transport companies were contracted to move large numbers of military personnel and matériel to and from the mission areas as well as within those areas (Voetelink 2007). Supreme and its subcontractors were contracted for that purpose. The contractors confronted particularly challenging conditions; specifically, these transports moved through dangerous and unsafe areas. Moreover, the transport companies were responsible for safety and securing their shipments that could take weeks and even months to deliver—due in part to tough border controls, ambushes, and warlords' demands for money in return for safe passage.

### *U.S. Contingency Contracting in Afghanistan*

The cataract of money—\$56.1 billion for Afghan reconstruction (SIGAR 2011)—that powers U.S. contingency operations that rely heavily on the private sector has had a widespread, corrupting influence. If such a vast amount of money were going to a country with a comparable population, but with a reputation for probity and well-established anticorruption institutions, like Canada (population 34 million to Afghanistan's 29 million), it would still constitute a historic challenge to the integrity and stability of public institutions. Clearly, Afghanistan has been unable and to a significant extent unwilling to develop a functioning system of inspection and oversight that would support the work of independent prosecutors.

The combination of a weak, corrupt state and an inflow of nearly \$500 million per week is the environment in which U.S. government agencies

and private parties work to complete hundreds of projects and supply thousands of goods and services. The reports of the U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR) detail the results of contingency contracting. In a report typical of its investigations, SIGAR reviewed the construction of troop housing and headquarters by Basirat Construction Company in 2010 under a contract let by the U.S. Army Corps of Engineers.

Our inspection found that construction at each of the six sites failed to meet requirements as established in the contract documents, construction plans, and specifications. The level of non-compliance at each site varied, but overall, our assessment found that the construction can be characterized as poor. Most significantly, we observed structural issues that cast doubt on the facilities' ability to withstand an earthquake, as required by the contract. In addition, metal roofing at all six sites was improperly installed, resulting in large gaps that allow water to seep through and will likely result in subsequent damage to the roof substructure and insulation. Lower-grade materials were substituted for the product specified in the contract documents. For example, residential-grade single-pane, non-tempered, non-laminated windows were used in all headquarters buildings, rather than the required commercial-grade windows that are thermally insulated, tempered, and laminated. AED-S (Afghanistan Engineer District-South) estimates it will cost up to \$1 million alone, to correct the construction deficiencies we identified. (SIGAR 2010)

The Corps of Engineers responded in a press release a few days after the SIGAR report. The release broadly accepted SIGAR's findings. It explained the problems in the project by citing security concerns that caused delays in material delivery. In addressing SIGAR's charge that oversight was lacking and that statutory sanctions were not imposed, the corps noted that it had bundled a number of similar projects together in Helmand province—a practice it would reconsider (U.S. Army Corps of Engineers 2010).

The corps' administrative capacity must be questioned, since the SIGAR assessment is virtually identical to evaluations of corps work in Afghanistan in a standard GAO audit and in an audit by the inspector general of the Defense Department. The DOD/IG report concluded that Corps officials did not

- develop adequate award fee plans for incentivizing and evaluating contractor performance;
- adequately conduct oversight and evaluation responsibilities; and
- adequately document and support award fee ratings. (U.S. Department of Defense Inspector General 2010)

The SIGAR report's conclusion is along the same lines (2010, 20).

The standard GAO audit reported deficiencies in tracking the \$1.8 billion that the corps had obligated in Afghanistan in 2010 (SIGAR 2010, 5). Corps officials told GAO that "they did not know" whether they could vet even a sample of subcontractors responsible for significant expenditures and that contractor data-entry personnel were still being trained (GAO 2011).

The corps' difficulties in inspecting and overseeing contracts in Afghanistan fit the pattern discerned by SIGAR in its report to Congress in October 2010, where it highlighted deficiencies in significant areas of contract management:

- Contractor vetting
- Identification and vetting of subcontractors
- Contractor data entry
- Tracking of project progress
- Cross-agency integration of data
- Sanctioning of contractor misconduct

The report was less an analysis than a compendium of already released investigations and audits. SIGAR's recommended consolidation of contract oversight and call for more specific guidelines may well be beneficial, but SIGAR made no attempt to broach the causes of what was a pervasive and chronic lack of oversight.

Perhaps the most prominent and thorough critique of Defense Department contract oversight came in testimony to the House Appropriations Defense Subcommittee by Comptroller General David Walker in September 2006 (Walker 2006). Just ten years after the Defense Science Board had pressed for broad outsourcing of all but war-fighting functions of the DOD (U.S. Department of Defense 1996, 77), Walker pointed out that while DOD contract obligations increased by 88 percent (from about \$130 billion to over \$250 billion) from 2000 to 2005, "the DOD acquisition-related workforce was generally unchanged" (2006, 13). Based on GAO audits and investigations, Walker reported serious shortcomings on key dimensions of DOD contracting—dimensions that are easily recognizable as key elements of the New Public Management.<sup>4</sup>

Walker's generalized critique was confirmed by the extent and variety of ethics failures related to U.S. government contracting in Afghanistan: each incident reflected the main points in Walker's report—managerial or oversight incapacity and lack of contractor accountability. The next section turns to a key element of accountability, the nature of internal controls in contractor organizations.



### ***Dutch Contractor Controls***

In the Dutch case, oversight of contingency contracting was completely focused on *performance outcomes*—regardless of whether the goals in the contract were achieved. There was hardly any control on the *process of governance*. In other words, there was some attention to the input and the output of the contractors, but little scrutiny was directed toward the throughput and the ethics considerations. In case of catering, for example, controls were imposed on hygiene related to food and water. There was little if any review of the Supreme company's operations. By contract, Supreme was obliged to report the exact number of people it employed, how many of its personnel went into and out of the camps, which subcontractors it used, and whether any personnel were killed or injured while working for the company. These reports, however, were never made. One interviewee from the Dutch army said, "Of course, Supreme is to blame here because they did not honor the contract. But we should not forget that we didn't push them either. Two months after a report deadline, we should have insisted on one immediately. We never did."

Oversight of PMCs was also confined to performance. The main oversight effort involved random observation, using surveillance cameras in some cases, to determine whether a specified, minimum number of personnel were guarding the outer ring of the camps.

It is clear from the Dutch case that transparency suffers under contingency contracting. We noted above that not much is known about the hired private companies and their modes of operation. In this regard, it is not clear how many companies were contracted, how much personnel they used, what costs were involved exactly, or what their involvements in violent incidents were. Questions about these issues, raised by Dutch members of Parliament, were not clearly answered by the Dutch Minister of Defense. Personnel must have been killed while working for the contingency contractors. How many, nobody knows. When there were casualties, they were often hidden from the Dutch army in Afghanistan as well as from the media. For example, during the transports by Supreme many of its security personnel and drivers must have been killed—that is about the most dangerous profession in the world.

Moreover, contracted companies were inclined to compromise transparency in order to protect their proprietary interests. Some of these companies worked for different foreign countries—for example, many food transports were for the Dutch, the American, and the Australian forces. Part of the contract by the Dutch with a hired civil air transport company was to keep the amount of money secret because after the Dutch would leave, the transport company would be in a better bargaining position.



### ***U.S. Contractor Controls***

A review of the several policy and procedure statements on business ethics that are available from contractor organizations operating in Afghanistan reveals a particular pattern. Those contractors with regularized (generally, frequent and high-dollar amount) contracts with the U.S. government have little or no internal monitoring capacity. Instead, their policies refer to compliance with applicable government regulations and cooperation with government contract officers, auditors, and investigators. This is true of companies that have been accused of ethical and other misconduct in Afghanistan, like K.B.R. and ArmorGoup's parent, G4S, as well as those with relatively clean records. As government has pushed public functions to the private sector, private contractors performing those functions have pushed oversight and accountability back into the public sector. The problem with this double-displacement is the well-documented lack of oversight capacity in the various government agencies responsible for contract oversight (USAID 2010).

A regular proposal in the literature on white-collar crime and public administration ethics is that private organizations that are entrusted with public functions (or, in the case of securities firms, those that hold a good deal of the public's money) should self-regulate. In particular, it is argued that the specific circumstances of each group of service- or goods-providers require specific controls. The premise is that government will inevitably either miss or overregulate important and vulnerable structural elements and processes. Information on the internal controls of even the largest contingency contractors is hard to come by—in the Dutch case those controls do not exist at all—and it is not an issue that has been explored by government officials concerned with or responsible for contingency contracting.

### **Reviving a Focus on Ethics in Contingency Contracting**

#### ***Prosecution for False Claims***

The most powerful weapon in the arsenal of federal contract oversight in the United States is the False Claims Act (FCA) (1863), which dates from the Lincoln administration. While it has been amended several times since the 1860s, the FCA is still characterized by the two elements that have made it a potentially powerful punishment and deterrent for 150 years. First, contract entities found guilty of defrauding the government are liable for treble damages, a penalty also imposed on companies guilty of antitrust law violation, but found in few other places in American law. Second, whistle-blowers, or "relators," as they are known in the statute, are awarded between 15 and 30 percent of the fine,

once it is imposed. Government investigators and U.S. attorneys also develop cases independent of information from relators. This combination of incentives and deterrence has been the subject of congressional debate twice during the war in Afghanistan. In 2003 and 2007, bills were introduced to reaffirm federal authority regarding contractor misconduct and to adjust penalties (Weisman 2007). A key argument against the proposed legislation and one reason why it has not become law is that the FCA, the acknowledged “nuclear” (i.e., most severe) option, has been sparingly used on contingency contracts in either Iraq or Afghanistan.

However, complaints about the need for more vigorous action against fraud in the health-care system were not brushed aside. An analysis of the record damages paid under the FCA in 2010 indicates major pharmaceutical companies as the focus of federal false claim suits. In 2010 Congress reinforced the FCA with a \$310 million allocation to enforce the newly enacted Health Care Fraud Prevention and Enforcement Action Team. It is apparent that the FCA is a key instrument in contract ethics enforcement and one that has not been effectively used to deter or punish fraud misconduct by contingency contractors.

In a submission to the Wartime Contracting Commission, the Taxpayers Against Fraud (TAF) Education Fund attributes neglect of the FCA in Afghanistan to Defense Department policies and procedures. TAF recommends that DOD contract officials require the submission of contractors’ internal governance documents and that DOD personnel and other potential realtors be given training in FCA law and procedures (TAF 2011).

### *Extending Oversight to Subcontractors*

The GAO and congressional reports on the nature and extent of oversight of contingency contracts often restate a common concern about the New Public Management—that monitoring and reporting on the principal contractor generally neglects the conduct of many hundreds of subcontracts providing goods and services in conflict zones. This point is made sharply by the TAF Education Fund in a blanket recommendation that disclosure and monitoring be extended to all subcontractors.

The extent of reliance on relatively anonymous subcontractors is impressive. During the expansion of the U.S. presence in Iraq and then of the NATO presence in Afghanistan, it became apparent that the support jobs required by keeping more than 100,000 troops in each country could not be filled by either Americans or Afghans. Most large support contractors (and those in other contact categories, like security service) turned to third-country recruiting for the thousands of additional workers they needed. However, the recruit-

ment and management of this large and largely unskilled workforce was not taken on by principal contractors themselves, but subcontracted to a variety of itinerant labor agents.

The report of a thorough investigation by Sarah Stillman into subcontracted recruitment and treatment of third-country nationals (TCNs) was published by the *New Yorker* in June 2011. Stillman details the lack of oversight or even basic knowledge among U.S. commanders of the wages and living conditions of TCNs and the willful neglect of monitoring and reporting on these subcontracts by the principals. For instance:

Soon after Mike Land, an American who was a K.B.R. foreman, complained about the living conditions of his Filipino and Indian men, he received an official reprimand: "You are expected to refrain from further involvement regarding the working and living conditions of the sub-contract workers as that is not your responsibility. . . . Any future interference with [the sub-contractor's] operations will result in additional action up to and including termination." In Afghanistan, one high-ranking contracting officer told me that labor law "doesn't exist here," and that enforcement would be hard to prioritize if it did: the job "is to get the war fighters what they need."

(Stillman 2011, 57)

The subcontract labor agents and support worker managers profiled by Stillman fit most standard definitions of human traffickers. Fijian women, recruited to work for "high wages" in Dubai—\$1,500 to \$3,000 per month—found themselves working in camps near front lines in Iraq for about \$300 per month, with no ticket home. After hearing credible reports of rape by their supervisors from several women recruited under false pretenses, Stillman investigated the process in place to deal with sexual and other abuse of TCNs. She found that the widely advertised sex abuse hotline was not answered during several days of calls. Eventually, however, the U.S. military command in both Iraq and Afghanistan issued orders requiring "humane treatment" of TCN workers—a response that belies the ethics guidelines and "zero tolerance" policies for sexual abuse issued by Generals George Casey and Stanley McChrystal.

In one incident, in December 2008, U.S. military personnel discovered that a warehouse operated off the base by a K.B.R. subcontractor, Najlāa International Catering, was filled with more than a thousand workers who appeared to be human-trafficking victims. Many of the men were sent home, but Najlāa retained its service contracts and won a new multimillion-dollar deal for operating a U.S.A.I.D. dining facility in the Green Zone. (Stillman 2011, 59)

One of the women who complained of being raped by her supervisor, a subcontractor employee, in Iraq was eventually flown to Washington, DC, to discuss her situation with State Department officials, who duly recorded her allegations and those of other women who worked with her. Stillman's report on the implementation of State Department imperatives about trafficking and abuse is notable for its resonance with the neglect of oversight seen in other areas of contingency contracting:

After the meeting, Ambassador at Large Luis CdeBaca, the director of the State Department's Office to Monitor and Combat Trafficking in Persons, notified officials at Army and Air Force Exchange Service (AAFES) and the Office of the Secretary of Defense about the allegations, and urged them to investigate. "We're going to make sure that Secretary Clinton is aware of these allegations," he wrote in a February 2010 e-mail to Defense Department officials, first obtained by the Project on Government Oversight. Soon thereafter, the women's story began to circulate among Army officials in a classified PowerPoint presentation, distributed by the U.S. Army Inspector General School. "Army policy opposes any and all activities associated with human trafficking," the briefing notes, adding, in red ink, "No leader will turn a blind eye to this issue!"

Yet, when reporters asked the U.S. Army's Criminal Investigation Command (C.I.D.) for details last summer, they were told that allegations of the women's mistreatment had been investigated earlier and were "not substantiated." (According to an internal AAFES report, "allegations of rape never surfaced" in the organization's prior investigation of the women's recruitment. (1-2)

## Analysis

Max Weber's trenchant critique of socialism includes a careful analysis of the pitfalls of reliance on the market for the provision of either public or private goods. The key point in his analysis is that without careful accounting, the legitimacy of market institutions, from small purveyors to large corporations, will erode, the system of exchange will become unstable, and supply will become unreliable. Weber's definition of a "profit-making 'enterprise'" is a "system of action capable of autonomous orientation to capital accounting" (1947, 192).

It may be that contingency contracting on the scale that it is currently practiced is not "capable of autonomous orientation to capital accounting." That is, the exigencies of supply and support and work conducted, literally, under fire do not allow for the regularized, careful management and evaluation that was foreseen (and touted) in the original NPM texts. What we get instead is

a rough mix of rules, ad hoc audits, and post-scandal investigations; and this situation is not new. The investigations of the Wartime Contracting Commission in 2011 are parallel to those of the Truman Commission (formed in 1941) and the Civil War Commission on War Profiteering (formed in 1863).

In his influential codification of the New Public Management, Christopher Hood argues that criticism of NPM must be made “in terms of possible conflicts between administrative values,” because of NPM’s “claim to ‘infinite reprogrammability’” (1991, 3). His conclusion parallels the story told here: “Only when we can test the limits of NPM in terms of relatively narrow administrative values can we start to establish its proper scope and put it in its historical place” (16).

In the twenty years since Hood wrote, three administrative values discussed here—transparency, efficacy of internal control, and enforcement of accountability—have been thrown into high relief by government outsourcing and privatization. And they have certainly been tested in the high-stakes environment of war zones. The evidence here is that none of these values has been successfully asserted or is very much in evidence in contingency contracting in Afghanistan, both in the Dutch and the American case. A blunt, but unhelpful response to Hood’s challenge would be that the limits of NPM regarding accountability and internal control have been tested and that NPM may be counted a failure in enforcing either value. It may be more productive to consider the evidence here in light of the prominent analysis of contract management published by Steven Cohen and William Eimicke in 2008, *The Responsible Contract Manager: Protecting the Public Interest in an Outsourced World*, in which they summarize a hopeful prospect for contract management:

The effective, ethical public manager seeks to identify the ways in which the contracting process may be corrupted, then establishes standard operating procedures to prevent such behaviors whenever possible. When prevention fails, the effective manager has also instituted rigorous monitoring, evaluation, and audit procedures to stop corrupt practices as soon as possible and punish the guilty. (26)

If we break down the components of Cohen and Eimicke’s characterization, we can see where we stand regarding the ethics of contingency contracting. The first step is assessing vulnerability to corruption. Given the ethical environment in Afghanistan and the pervasive use of contractors, the need to assess internal controls of key suppliers of goods and services is particularly necessary. In addition, the status and activity of subcontractors, especially those responsible for the well-being of foreign workers, must be closely monitored and regulated.

The second step, reacting to the failure of prevention, has two requirements:

- Instituting rigorous monitoring, evaluation, and audit procedures: As the first part of this chapter shows, the United States and the Netherlands have rigorous procedures in place. But they have not been instituted. David Walker's criticism of the inadequacy of DOD contract review capacity is perhaps the most relevant explanation.
- Punishing the guilty: The most powerful tool available to punish those responsible for contract fraud is the False Claims Act, which is available for use if administrative and adjudicatory capacity is expanded to allow its use on large-scale contingency contracts.

The larger story of the drive to outsource suggests another explanation for the diminished capacity that underlies most of the ethical failing of contingency contracting. As performance, effectiveness, and efficiency are raised to preeminence in both the U.S. and Dutch procurement cultures, these three performance-oriented values eclipse the "unproductive" and less mission-relevant functions of oversight and ethics enforcement summarized by Cohen and Eimicke and discussed at length here. In a time of flat budgets, another hundred auditors come at the expense of operational priorities. For that reason, expansion in oversight capacity must generally be initiated and instituted by officials with portfolios that include the protection of public values—most often, legislators and magistrates. Otherwise, ethical lapses in contingency contracting may be described in the words of Zygmunt Bauman (1993, 18): "Sin without sinners, crime without criminals, guilt without culprits! Responsibility for the outcome is, so to speak, floating, nowhere finding its natural haven."

## Notes

1. Bregje Dekkers, MA, collected most of this data on the Dutch case.

2. The quality assurance surveillance plan is the government's inspection plan. It documents methods used to measure performance of the service provider against the requirements in the PWS. The agency relies on the service provider to monitor daily performance using its own quality control plan, but retains the right to inspect all services. When the agency makes a performance decision, the agency reevaluates and modifies the existing quality assurance surveillance plan, based upon the selected provider and the selected provider's accepted quality control plan (OMB 2003, Attachment D [A]).

3. The Netherlands government website offers official English versions of documents on each ministry's page: [www.government.nl](http://www.government.nl). Dutch government documents quoted here are taken from versions provided on the website.

4. A conventional list of the main tenets of NPM is provided in Scott London's (1994) review of *Reinventing Government* by David Osborne and Ted Gaebler (1992):

(1) steer, not row (or as Mario Cuomo put it, “it is not government’s obligation to provide services, but to see that they’re provided”; quoted in Osborne and Gabler 1992, 30); (2) empower communities to solve their own problems rather than simply deliver services; (3) encourage competition rather than monopolies; (4) be driven by missions, rather than rules; (5) be results-oriented by funding outcomes rather than inputs; (6) meet the needs of the customer, not the bureaucracy; (7) concentrate on earning money rather than spending it; (8) invest in preventing problems rather than curing crises; (9) decentralize authority; and (10) solve problems by influencing market forces rather than creating public programs.

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## The Beleaguered Ideal

### Defending NCAA Amateurism

*J. Patrick Dobel*

The National Collegiate Athletic Association (NCAA) is one of the largest and most powerful nonprofit organizations in the United States. More than 1,000 colleges and universities form the membership, and the organization sponsors eighty-nine championships in twenty-three sports across three divisions of colleges. The association regulates the terms of competition and eligibility for over 430,000 students (NCAA 2009).

In the last two decades intercollegiate sports have grown into one of the most popular and visible sports industries in the country, with thousands of football and men's basketball games televised, and tens of millions viewers watching. This popularity, coupled with the vast sums of money involved in attendance and media rights, has highlighted a decade of scandals afflicting elite NCAA athletic programs. Many of the scandals involve extra payments to student-athletes, special benefits to student-athletes, and attempts by agents to funnel money to elite athletes in order to gain them as clients for professional leagues. The violations cluster around rules justified by the NCAA's core mission that collegiate athletics should be *amateur*.

The amateur vision unites the ideal of being a *student-athlete* with the commitment that "participation should be motivated primarily by education and by the physical and mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises" (NCAA 2010a, 2.9). This ideal connects a motivation for play with a

broader purpose of education as an activity with its own worth and as a way to prepare for life.

The ideal of an *amateur student-athlete* leads the NCAA to require that all athletes who play on intercollegiate teams should (1) be admitted to a college; (2) be full-time enrolled students; (3) be in good academic standing and making academic progress to graduation; and (4) be treated similar to other students. This ideal and model depend upon the student-athlete being treated primarily as a student and receiving no special treatment beyond what “regular” fully enrolled students would receive. It draws a line in the sand by defining *amateur* as a negative—not being paid. The NCAA extends this definition to include the condition that the student may not receive special benefits beyond what other students might receive. Many recent scandals flow from efforts to give extra benefits to college athletes at three critical leverage points: recruiting, staying in school, and leaving school for professional teams.

At the present moment the cumulative television contracts for the top NCAA football conferences total over \$3 billion per year. Intercollegiate athletics, largely Division I football and men’s basketball, generates over \$10 billion in revenue and represents high reputation stakes for colleges. This influx of money coupled with the scandals has created media frenzies and vicious attacks upon the NCAA. Special bile has been spent on the seeming hypocrisy of that ideal of an *amateur student-athlete*.

This chapter will explore the meaning and importance of the ideal of an *amateur student-athlete* to the modern intercollegiate enterprise. It will discuss the limits and strengths of the ideal and a way to reconceive the ideal that is realistic and true to student-athlete welfare. The chapter investigates the configuration of actors and forces that surrounds intercollegiate athletics and that will continue to perpetuate these scandals. It concludes with a discussion on how a reconceptualized amateur ideal can guide conversations on contemporary controversies.

## **The Institution of the NCAA**

The NCAA was born in crisis. It began in 1906 as a desperate attempt by a small number of existing colleges to protect the sport of college football from being abolished by public outcry led by President Theodore Roosevelt. From 1905 to 1910, seventy-nine deaths were reported from football as well as 554 critical injuries. The NCAA began as a regulator to protect football from itself.

The NCAA is a membership organization run by its 1,000-plus members, which are accredited colleges and universities. Active members have the right to participate in NCAA events, especially championships, vote on legislation,

and enjoy the benefits and privileges of membership. They are expected to abide by and self-enforce and self-report on NCAA rules and regulations and abide by compliance and enforcement procedures and outcomes of the NCAA. The NCAA's constitutional purposes cover three domains: govern intercollegiate athletic competition in a fair and safe manner, sponsor fair and open championships for all members, and promote a clear demarcation between professional and amateur collegiate sports competition (NCAA 2010a, 2010b, 2010c).

The organization consists of three divisions of membership that are divided by size and scope of programs, by attendance at sports, and by the range and number of grant-in-aids or athletic scholarships that a school awards. Each division has different rules about eligibility, membership, and scholarship commitments, and each votes on its own legislation.

The governance structure is very complex, with votes held on any major pieces of legislation at yearly conventions. Ongoing oversight of major areas is divided into cabinet and committee structures that contain representatives from each of the divisions and focus upon monitoring, writing, and recommending legislation for areas such as championships, academics, or recruitment. Other specialized committees review legislation or oversee a complex appointment process that enforces division as well as gender and racial balance throughout the organization.

As a membership organization, the NCAA is governed by the rules its membership establishes. The elaborate governance process is loaded with checks and balances and reflects multiple divisions and interests. The process imposes immense consultation that results in a cumbersome legislative process often taking two to three years to get legislation proposed, refined, and passed. The organization divides among divisions, and divisions further divide between wealthy and middling schools and those that sponsor many sports and those that sponsor few. At Division I the sponsorship of football creates a chasm between the football schools and the rest. Football's size, expenditures, and visibility as well as payoff overwhelm most other distinctions. As a membership organization, most power, discretion, and enforcement reside at schools and to a lesser extent conferences.

The NCAA mission focuses the organization upon trying to ensure that student-athletes are treated as and grow as students. It regulates sports in a way to create some sort of equal playing field for the integrity of competition and to address any issues of health, corruption, and technology that emerge. It sponsors championships and in doing this controls and revises the rules of the sport and tries to ensure some level of equity across schools within divisions. Defining and defending the integrity of a sport by rules, regulation, and an equal playing field emerge naturally from the core mission to provide a domain where student-athletes can develop and compete in a field of endeavor.

Most nations possess national sports federations to regulate the integrity of the sports and the quality of competition. The United States possesses such bodies for most sports associations as well as a particular subset oriented toward Olympic as well as world and regional competitions. A number of countries see sports as an aspect of national culture and provide government subsidies or support for national or regional teams or local club associations. This international model identifies athletic development as an autonomous path for an individual and often segregates athletes into sports programs and special sports institutions by the age of ten. Athletics are tracked as a separate way of life and profession (Pierce, Kaburakis, and Fielding 2010).

An accident of history links a British tradition that idealized the role of athletics in classical education with an American penchant for students to organize their own sports competitions at the college level (Allison 2001). This marriage between athletics and formal educational institutions grew from a neoclassical tradition as well as the history of American colleges that spawned self-organized team sports. The student-organized sports teams quickly grew into quasi-professionalized enterprises with coaches, stadiums, and rabid alumni anxious to support club and school sports such as football, rowing, and baseball (Gorn and Goldstein 2004).

Fusing athletics and formal education created a unique American hybrid. This hybrid model surprisingly generated immense public support across the country as colleges found athletics a focal point of loyalty and community on their campus and among their alumni. Athletics spurred local and national reputations as well as providing an interesting amalgam of athletes succeeding in the classroom and preparing for life after college. This path of linking sports participation to college education differed fundamentally from the apprentice model of athletics in other countries. More than a few international students seek their way to the United States to get a college education and athletic experience in a way that does not exist in their home countries (Kaburakis 2005; Pierce, Kaburakis, and Fielding 2010).

The NCAA regulates only the collegiate levels of competition and eligibility in a limited number of sports. It coexists with other national sport organizations and Olympic and national team groupings. Precollege local leagues, Amateur Athletic Union (AAU), and select local teams serve hundreds of thousands of amateur teenage athletes. The NCAA rules have immense impact upon many young athletes because the ultimate end of their athletic journey will be a college competition, not professional or international competition. Competing at college marks the end of athletic careers for 98 percent of the student-athletes in the United States. They will leave college to start a life and compete for jobs upon graduation and leave college to start a new life in which sport will be purely an occasional recreation.

The NCAA's ideal model and regulations cascade through all levels of competition. The lower levels of competition pitch their own rules and preparation toward college competition. The NCAA establishes a minimum set of high school courses and minimum grade point average in those classes that students must meet before they can be considered eligible to play college athletics. The NCAA sets a sliding scale for this minimum grade standard and score on national aptitude examinations such as the SAT or ACT examinations. These requirements shape the aspirations and behaviors of young men and women who seek to compete at college.

This means that the NCAA's definitions of *amateurism* and *student-athlete* carry serious moral and behavioral weight because they mold the behavior of many aspiring athletes. To understand how the ideal and the rules governing amateur student-athletes influence behavior requires a closer look at the ideal and how it might be recast.

### **The Ideal of the Amateur Student-Athlete**

A torrent of criticism rains down on the NCAA's defense of amateurism. The criticisms reduce to two dimensions. First, college athletes are not really amateurs but rather "paid" already. Second, the shield of amateurism permits colleges to make large amounts of money from student-athletes, and this money is spent on high salaries for small numbers of adults while the students get very little in return. Amateur student athletics is either not real or exploitation (Byers 1995; Zimbalist 2001). Modern media critics engage in a relentless attack upon the ideal of amateurism. (For a representative sample, see Cornwell 2010; DeFord 2011; and Rosenberg 2011.)

The origins of ideals seldom encompass the complexity and power of the ideal. Amateurism's critics emphasize that the nineteenth-century English ideal of sport as an avocation for those who can afford it builds on an ugly class-based ideology and misunderstanding of the classical ideal (Byers 1995; Lazaroff 2007; Shropshire 1991). The critics touch upon one stream contributing to our understanding of amateurism. But the ideal has deeper and more robust roots (Allison 2001). The philological sources of sport point solidly to the Greek and Roman understanding of sport as a "pastime" or "avocation." Athletics grew as a practice that was not an occupation central to survival. The philological roots point to athletics, competition, and play as ways of learning and perfecting skills. The discipline and process of playing athletics could be of considerable educational value to human beings (Barnhart 1988; Watkins 2000).

Sports and athletics developed from two related trajectories. First, sport arose as a form of play. Play connotes a sense of enjoyment in the activities

one undertakes. Play can involve practicing critical skills, as do young animals in their play. The second trajectory supplements this approach with sport as a form of leisure enjoyment for any class. Working classes and peasants always developed their own games and play just as the well off did. These elaborations of sport led to competition and spectators.

Play links sport and athletics as endeavors not central to survival or existence. People may train and practice through play, but they no longer exercise for survival skills. Athletics develops as a practice much like art. Sport weaves into the texture of life but later acquires autonomy as a sphere of activity on its own. Sport, like art, matures into a domain in which individuals could make their own living. Individuals could act as athletes and become “professional” or “commercial” artisans who got paid for their skills. This confusion of “professional” with “commercial” causes no end of modern problems for the NCAA.

These origins imply that being an amateur does express a way of being in the world and it can apply to endeavors in athletic competition. The ideal possesses a moral coherence and can be deepened and expanded to defend its proper role in framing intercollegiate athletics.

### **The Moral Structure of Amateurism as Love**

In a historical and etymological view, an amateur orientation emerges in contradistinction to a “commercial” or full-time paid artisan orientation. European critics of the Anglo-American view of amateurism argue that being “professional” encompasses committing to develop excellence in a practice regardless of compensation, and the real distinction in European eyes exists between all professional athletes and those professionally accomplished athletes who participate in athletics for commercial reward (Fielding, Kaburakis, and Pierce 2010; Kaburakis 2005).

The etymology of the word *amateur* reveals more about its multiple meanings. The word arises from the Indo-European notion of loving or committing and, at an even deeper source, of mothering and growth. The linguistic roots suggest that an amateur’s motivation springs from love or passionate commitment to master athletic skill. The European criticism of a narrow Anglo-American amateurism points out that many individuals seek professional expertise whether they succeed commercially or not because they are driven by the intrinsic love of mastery (Allison 2001; Watkins 2000).

The NCAA’s root moral insight about amateurism and athletics is not vitiated by a historical ideology of the English gentleman. The key to extend the defense and usefulness of the NCAA ideal of amateurism may be to understand that a true amateur who acts from love of a practice can gestate different and



related motives from that love. These several motives remain consistent with a defense of an amateur approach to sports as well as an approach that nests being an athlete with being a student.

The concept of amateurism has complex resonances. One modern usage of the word *amateur* denigrates a person or performance. Calling someone a "rank amateur" or calling a performance an "amateur hour" insults the quality of performance. Common English usage often compares the limited skills of an amateur with those of true professionals without calling up the specter of commercialism or payment. This type of amateur is portrayed as a dilettante who "dabbles" in an activity. This demeaning usage implies criticism of a person or team that does not devote sufficient time or focus to master an activity, whether athletic or artistic. Interestingly, most artisanal or professional practices sediment into levels of expertise that reflect mastery tied to talent, attention, energy, and practice (Csikszentmihalyi 2008; Loehr and Schwartz 2003). Being a committed amateur can involve steadfast devotion to get better and master a practice whether one gets paid or not. A person can aspire to professional-level expertise without aspiring to being paid or making a living from the activity (Allison 2001). A wide range of human endeavor, from gardening, politics, music, and acting to inventing or community organizing all reflects this distinction.

The ideal of being an amateur exhibits a stance of being toward an activity. This stance is lived out as a structure of psychological and moral motivation. The NCAA ideal of an amateur postulates that student-athletes play predominantly from love of the sport and that the rewards should flow from intrinsic satisfaction and the preparation for living a fuller life. This reality is true for 99 percent of intercollegiate athletes.

Loving an activity is complicated (de Rougement and Belgion 1983; Outka 1977). Love of athletics involves three aspects: (1) athletes experience joy or abiding satisfaction intrinsic in performance; (2) athletes aspire to self-worth and expression through psychological, intellectual, and physical proficiency to perform at their highest level and prove this through winning; (3) athletes drive to be the best they can be given their physical reality.

Human love entangles desire, self-worth, aspiration, passion, concern, and even agape. No human love remains pure or simple; few human ideals or motivations are (Badaracco 1997; Dobel 1990). Amateur athletes are no different; they can experience the exultation of athletic prowess but also pursue competition as much to prove their self-worth or dominate others as from pure joy. More important for unpacking the NCAA focus upon payment and amateurism, being an amateur costs resources. Achieving the amateur ideal in any area of life requires significant investment. Any attempt to segregate the amateur ideal, understood as a structure of motivation and aspiration, from resources will fail.



### *The Cost of Being an Amateur*

The NCAA is not promulgating the ideal of amateur as dilettante. College athletes constitute an elite group of highly proficient individuals who devote years of effort to achieve their competency. The resource costs of being an amateur blur the tension between pursuing excellence out of love and being a paid professional who makes a livelihood from athletics. According to social psychologists who have studied the concept of mastery of skill, becoming a true master of a skill set can involve 6,000 to 10,000 hours of work and practice (Csikszentmihalyi 2008). Even a person motivated by love needs serious resources to achieve excellence.

Understanding the *cost of achievement* moves the real-world understanding of amateurism beyond a singular focus upon being paid. Even an athlete motivated largely by love and desire to excel still needs significant resources at any level. It is a fundamental mistake to isolate being an amateur from a realistic assessment of the costs of being one.

The costs begin with time and attention. Becoming good at anything involves opportunity costs because attending to athletics means not attending to something else. Human attention expends energy—physical, mental, emotional—that is not expended elsewhere. Attention exists as a person's most precious resource because it focuses intelligence, emotions, and body together (Csikszentmihalyi 2008; Loehr and Cohen 2003).

A commitment of time, attention, and energy depends upon having food, shelter, and safety that provide the foundations that allow athletes to devote themselves to a pursuit. Love will not fuel the body or provide expert instruction. The costs increase as athletes seek more knowledge and capability to achieve athletic proficiency. A budding athlete needs coaching expertise, teaching, and a place to practice, such as a swimming pool, soccer field, or gymnasium; as the athlete gets older, the sophistication of this space increases. A young amateur must find time and transportation to get to the better facilities and competition.

Developing athletes need competitors who challenge them to get better; a team requires the same. The better a team or athlete gets, the higher the level of opponents they need. A developing and aspiring amateur athlete needs access to leagues of teams that have access to facilities, uniforms, transportation, practice time, and, above all, coaching.

The true cost of being an "amateur" competitor is quite substantial. Players need serious resource support to do this at any level and in any country. This points to why the European critique of amateurism carries such weight. It also identifies why countries that value sport as an independent activity provide state subsidies for sport activity and organizational support at very

early ages. Even accepting the primary moral and motivational structure of amateurism requires an honest acknowledgment that being an accomplished amateur costs resources. The NCAA manual demands a “clear demarcation between intercollegiate athletics and professional sports” and draws this line in the sand with a simple standard: a professional athlete is “one who receives any kind of payment, directly or indirectly, for athletic participation except as permitted by the governing legislation or the association” (NCAA 2009, 1.3.1, 12.2.3). An honest discussion of the ideal of amateurism, however, should acknowledge that playing for love or health and mental benefits still necessitates significant investment of personal and social resources. It costs resources to be a successful amateur. It takes substantial resources to grow into an elite amateur athlete.

### *Love of Glory, Winning, and Gain*

The NCAA also narrows the motivational purity demanded of an amateur. Right now, the NCAA insists that an amateur athlete’s “participation should be motivated primarily by education and the physical, mental and social benefits derived.” The definition ends with an insistence that the sport activity must be an “avocation” for a full-time student (NCAA 2010a, 1.3.1, 2.9).

The complexity of love illustrates that being an amateur can comprehend other natural motives. Three other aspects of desire can drive an amateur athlete. These are love of glory, the desire to win, and passion to create a career. These aspirations are not incompatible with the amateur ideal defined by the NCAA and should be incorporated into the NCAA’s understanding of a reasonable moral and psychological structure of motivation.

Love of glory abides deeply in the classical ideal of *arête* or excellence (Adkins 1975; Williams 1982, 2008). The quest for recognition of achievement and the quest to be the best align naturally with athletic achievement. Athletic competitions designate winners and provide an arena to prove one’s superiority to a field of competitors. Seeking glory lines up comfortably with being an amateur.

The second ambition, to be the best and to triumph, is closely related to the origin of athletics as play to prepare for war. There is nothing pure or unselfish about the pursuit of glory and recognition. In the Greek world, losing could entail loss of everything (Adkins 1975; Dobel 2006). The desire to win can grow from a bottomless egoism that asserts itself by dominating others. It can grow from abiding insecurity that can prove self-worth only by being superior to others. It can grow from a chip on one’s shoulder and the need to prove one’s worth by defeating others. Yet this very idea of being a champion and entering championship tournaments

lies at the heart of the NCAA project. The NCAA's sponsorship of eighty-nine championships and the ambition and motive to excel demonstrate the enduringly mixed impulses that drive amateur competition (NCAA 2010a, 2010b, 2010c).

The third ambition driving individuals to succeed is self-interest in finding a means to make a living. This motive seems to strike hardest at the NCAA insistence that the motive of a student-athlete should be tied to self-expression and an avocation. I think, however, that the NCAA ideal can extend if it takes the notion of *student-athlete* more seriously.

College students attend school not just to learn or master skills but also to prepare for making a living in the world. Many are already working part-time during college; many others take on internships to get experience for future occupation. Many universities integrate field learning or on-the-job training with traditional education in order to prepare students for success and careers in the world after graduation. The rational and good motive to get ready for life after college and to pursue this goal through classes, internships, labs, or extracurricular activities is woven into the texture of education.

Student-athletes as students should be able to participate in athletic competition as preprofessional training just as they and all students approach their other college courses. Less than 1 percent of all NCAA student-athletes have the opportunity to compete in professional sports arenas. This figure rises to 3 percent for Division IA football players and 1.6 percent for Division IA male basketball players. A few more may have the chance to compete on national or sponsored international teams. Finally, some student-athletes will enter into the world of sports administration at high school, club, college, or professional levels. While the total numbers may be very small, a few thousand a year out of the 90,000 student-athletes who graduate each year, they should be permitted this outlook and the opportunities that flow from it.

This analysis suggests that if we view the NCAA ideal of amateurism as a structure of aspiration and motivation that should align with being a student, then several attributes need to be highlighted.

- First, being an amateur costs demands time and resources from both the individual and the institution. Even being an amateur playing solely for personal satisfaction requires investment by the individual and the others.
- Second, the NCAA's sponsorship of championships extends the amateur ideal to the desire to excel and win glory and recognition. This matches the classical ideal and modern practice but also opens the door for a more

mixed motive and aspiration structure that recognizes the self-interested desire for worth and recognition.

- Third, students, including athletes, attend school not just for the intrinsic value of education but to prepare for careers and life after college. Internships, jobs, practicums, labs, and extracurricular activities as well as athletic competition support this legitimate ambition. No incompatibility exists between being a student and amateur and pursuing an avocation to prepare for a career.

### **Political and Economic Pressures**

The attacks on NCAA amateurism arise partially from the NCAA's excessively narrow definition of amateurism but mainly from the economic pressures and rewards in Division IA football and men's basketball. These two sports generate over \$750 million in revenue just for the NCAA per year (NCAA 2009). In broader terms, NCAA Football bowl schools had over 37 million people attending their football games in 2009, more than doubling National Football League attendance (ESPN.com 2010; Fulks 2011). The combined revenue generated by college athletics from ticket sales, media rights and contributions, and institutional support was estimated at \$11.5 billion in 2010. Almost all this revenue derives from men's basketball and, above all, football (NCAA 2010a).

The immense revenue generated by these two NCAA sports has led many commentators to conclude that NCAA student-athletes are not students and not amateurs, but paid professionals or commercial players who are "paid" for commercial and revenue-generating endeavors. The vast majority of these issues and problems concentrate on the two sports in Division I of the NCAA.

A chasm separates Division I football and men's basketball from all other college athletics. Its membership requires that a school sponsor a minimum number of sports, possess a certain level of facilities, and demonstrate the ability to generate minimum attendance numbers. Admission requires a multiyear process of evaluation and proof of a school's willingness to generate attendance and sustain facilities and teams. Admission in to this division requires colleges to prove a significant institutional commitment to a wide range of sports and prove a consistent level of external support from supporters (NCAA 2011a).

Division I beckons to many schools because its sponsors the most visible and lucrative NCAA championships—men's basketball as well as hockey, lacrosse, and soccer. The NCAA also certifies football bowls and sets the minimum standards for football teams to get invited to a postseason football bowl game. Division I membership can provide a school with visibility, stature, and

the opportunity to generate revenue. These advantages increase exponentially if a college can get a team into the NCAA basketball tournament, which has evolved in American sports culture into a month-long phenomenon known as "March Madness." It provides money to the conference for wins at each level as well as focusing the entire country's attention upon the participating schools for that month. The tournament distributed \$180.5 million to tournament participants' conferences in 2010 (NCAA 2010a).

Division I takes money and serious investment. Division I membership does not guarantee making money, and in fact, the division is driven by its own class divisions. All sports, men's and women's, sponsored by the NCAA lose money except football and basketball and in rare cases hockey or lacrosse. Every single NCAA championship at all three levels loses money, except lacrosse, wrestling, and hockey. These make small "profits"; the entire NCAA championship enterprise is now funded by the men's basketball championship. This event has evolved in American sports culture in a month-long phenomenon known as "March Madness."

One hundred of the 337 Division I schools do not have football, but only basketball. They represent a unique set of schools separate from the football schools. This group revolves around the NCAA basketball tournament with its visibility, reputation enhancement, and chance for revenue.

Even the football schools subdivide into two groups. The 118 Football Championship Subdivision schools offer fewer scholarships, have smaller facilities and staffs, and play for an NCAA-sponsored championship. None of these football programs pays its own way. The remaining 120 Football Bowl schools have larger staffs, give out a full eighty-five scholarships, and have access to football bowls. The NCAA does not sponsor a national football championship; bowl games and the Bowl Championship Series have evolved largely outside of NCAA control (NCAA 2010a). At present, all but fourteen of the NCAA Division I programs lose money and require massive fund-raising and significant internal subsidies. Many larger Division I programs have taken on significant debt loads to finance stadiums and participate in the "arms race" to attract student-athletes (Fulks 2011; Knight Commission 2010).

Divisions II and III have no significant commercial or media value but harbor 250,000 student-athletes. These schools and athletes live on a scale generally compatible with the revised version of amateurism. Another 100,000 student-athletes at Division I participate in sports where they have no real career possibilities. Their participation occurs as a passionately serious (a) vocation dedicated to mastery of a craft at the highest level and devoted to winning a championship. After college these students will move on to lives in which athletics will usually play a marginal role (NCAA 2009).

The wealth and status surrounding two sports in Division I intercollegiate athletics spawns the pressures and scandals that assault the amateur ideal. Clusters of actors try to influence intercollegiate athletics in ways that subvert the amateur ideal. The problem begins because the high stakes now place immense pressure upon college coaches to win and win quickly. Winning generates visibility and revenue. Winning coaches at elite Division I programs command salaries that far exceed the salaries of state or university officials (*USA Today* 2010a). The salaries, visibility, and pressure from university administrators and boosters subject coaches to intense scrutiny and very little job security.

Senior university administrators expect a return on investment in terms of increased visibility that can increase national status, revenue, and enrollment. Because most football programs do not even cover their own expenses, administrators must justify the subsidies and fund-raising devoted to teams (Fulks 2011). Uneven data suggest that athletic success can increase enrollment or applications and sometimes contribute to higher donation levels.

The college administrators face even greater demands from fans, media “partners,” and, above all, selected “boosters.” Boosters have an official relationship with the university athletic program. They often provide significant donations and sponsorships. In return, they gain the psychic and social status of associating with a winning team, but many want access to and live vicariously through the young athletes.

Boosters and fans weave college athletic support into their community and identity. This powerful base aggressively articulates its position in letters, communications, talk radio, and especially in its willingness to donate money, provide corporate sponsorships, and buy tickets—three critical revenue streams. The boosters not only pressure administrators but also insinuate themselves into the program through contacts with players, administrators, coaches, and fund-raisers.

Boosters, sponsors, and donors have great influence in hiring or firing of coaches. They often provide funding for the coach’s contract and often help buy out or augment a coach’s contract. Most modern college coaching contracts are structured so that the base salary from the university is small. The true compensation comes through special media contracts, sponsorship fees, or service payments (*USA Today* 2010a, 2010b, 2011).

This inordinate influence of boosters and donors exposes the tensions and limits of amateurism at three points in the lives of student-athletes: recruiting, retaining, and leaving school. Coaches need high-quality athletes to win and spend a very large part of their time recruiting student-athletes. Recruiting is a cutthroat and zero sum enterprise aggravated by the pressure on coaches to win quickly. Mutual fear of others gaining competitive advantages have led to



a thicket of NCAA rules and enforcement obligations. To get around these rules and gain an advantage for their schools, boosters try to funnel money to influence the decisions of recruited student-athletes. This money can go to parents, relatives, influencers, or coaches who surround highly recruited young athletes. Consistent data suggest that almost 25 percent of student-athletes are offered illicit benefits during recruiting (*ESPN Magazine* 2012). Boosters can augment tightly regulated official visits of athletes to a campus with visits to strip clubs, lavish restaurants, or parties, all of which violate NCAA regulations.

At the retaining level, this initial covert provision of money to student-athletes often continues as a way to keep them at a particular school. The ideal of amateur *student*-athletes drives the NCAA to insist that student-athletes be treated like other students. A quick look at recent scandals demonstrates the ways that boosters circumvent the rules on amateurism to funnel special benefits to student-athletes. Student-athletes may hold jobs but should be paid market wages for proper work. Past scandals demonstrate how boosters will hire student-athletes for jobs but not demand that they work, so athletes get paid for no work, a subsidy of their athletic participation that is not available to other students. Boosters will also pay far beyond the market rate so student-athletes get privileged treatment beyond what other students get (Associated Press 2007; Thamel and Evans 2006). Boosters expand this range of hidden payment by offering free meals or visits to clubs or special visits to properties (e.g., beach residences, boats, and hotel rooms) as ways to compensate athletes, such as occurred at the University of Miami (Robinson 2011). They could provide subsidized or below-market services such as tattoos, such as occurred at Ohio State. Boosters create inflated secondary markets or dark markets to funnel extra money to athletes by paying far beyond market value for students' personal football memorabilia (rings, trophies, etc.) (Robinson and Wetzel 2011; Yahoo Sports Staff 2011). This very recent list represents very common patterns that have existed for seventy years and will continue at these stress points where excess benefits are paid to athletes to get and keep them enrolled at schools.

The limited pool of potential professional athletes introduces the last vector of pressure upon amateurism. Between 1 to and 3 percent of elite college football, baseball, and basketball athletes have a chance to move on to a paid professional team. They pose an inviting target for a wide array of middlemen who want to manage the transition to commercial athletics. Agents, financial advisers, and interested parties, including family, want to influence the young student-athlete's choice of agents and advisers, all of whom can make substantial money from representing and advising student-athletes.

Agents will suborn assistant coaches, family members, best friends, or girlfriends to get access to the athlete. They often will provide limited funds

over a long period of time to help the student live at a decent level beyond what scholarships and food allowances offer. They try to build up loyalty and expectations by giving gifts and then taking advantage of this early connection to induce gratitude and become the student-athlete's agent (Cialdini 2006). Agents might provide cars, houses, or even jobs for the player's family members and insulate the player from knowledge of the violation. For instance, agent pay offs suborned an assistant University of North Carolina coach, and agent money found its way into the bank account of parents of a University of Southern California potential superstar's parents (Curtis 2012; Robinson and Cole 2011).

On the other hand, elite student-athletes with paid career possibilities need expert advisers to deal with professional sports teams. Right now the NCAA rules prohibit legitimate contact with qualified advisers early in their collegiate eligibility. The asymmetry of power between a college student and professional teams is too great. Student-athletes with reasonable chances of becoming professional players need help to navigate that treacherous borderland. Expanding the ideal of amateurism in a way that expresses concern for a student-athlete's professional aspirations could address this problem.

The NCAA, conferences, and colleges all have strong interests in controlling and marketing the images associated with the sports and the players. Many sports are marketed around the team but also star players who focus media exposure and ticket interest. Interestingly, given how brief college careers are, the focus often shifts to superstar coaches. Merchandise and images generate revenue to finance the money-losing enterprise of college athletics. These marketing schemes conflict with potential issues of amateurism when the visibility of the college student-athlete provides an opportunity for financial gain by selling merchandise or likenesses while at the school. Colleges, conferences, and the NCAA aggressively limit the use of student-athletes' names and images to sell products or to enjoy material gain in the interest of preventing exploitation but also maximizing institutional income.<sup>1</sup>

At the campus level, college presidents must defend money-losing and low-visibility athletic programs. Title IX demands for gender equity strain programs and resources as schools grapple with providing significant opportunities for female athletes in money-losing programs. Any higher education institution sponsoring athletics faces the need to raise funds and generate revenues, and this demand amplifies the motivation to win and the power of donors and boosters.

The student-athlete who plays at Division I in basketball or football lives a very complicated reality that makes it hard to be either a traditional college student or an amateur in whatever form it is expressed. Each player not only plays in a way that generates revenue and reputation for the university, but



is sustained by a scholarship that the university grants. The scholarship, if full, will pay for books, classes, board, and lodging but have no real room for “actual and necessary” living expenses. In some ways, these scholarships are more limited than those given to highly recruited students who gain grant-in-aid packages to cover real costs of attendance.

This complex status emphasizes the reality of being a high-achieving “amateur.” It takes a huge investment of time and support to become successful at anything, including athletics. Average Division I student-athletes spend thirty to thirty-five hours a week working on their sport, even when not in season! This covers all student-athletes, not just football or basketball players. It covers athletes on scholarship and not on scholarship. Being an elite amateur requires great personal and institutional cost and aims for a professional level of expertise even if not commercially paid (NCAA 2011b).

Just as science students in a lab or drama students on a stage, college athletes practice and play in facilities supported by the university. The student-athlete receives medical, training, and conditioning care from qualified personnel paid by the university. The student-athlete wears uniforms bought by the university, uses transportation supplied by the university, and works out daily with coaches paid by the university. In addition, a management infrastructure manages events, raises money, markets the programs, sells tickets, and works with donors and alumni. A vast infrastructure supports the student-athletes, meaning that in no monetary way can they be considered amateurs in a pure sense, although they do qualify in the realistic, revised sense discussed.

Student-athletes are compensated with an education and supported by services and provided with the sustenance needed to develop and compete in the sport they choose. The average investment per student-athlete comes to between \$75,000 to \$95,000 per year in a Division I program. As we have seen, this is entirely compatible with a realistic understanding of the real costs of being an elite performer in athletics or any domain.

This dense infrastructure illustrates why the indictments of the amateur ideal miss so much. The reality is that any high-achieving elite enterprise requires a vast infrastructure to make the amateur enterprise workable and sustainable.

### **Indictments of the Amateur Ideal**

Two major indictments have recurred for the last 100 years of college sports. They reflect the basic tension involved in the enterprise and will not disappear. The question really is whether the NCAA can articulate a reasoned and coherent defense of amateur student-athletes that generates consistent rules and addresses some of the tensions inherent in the concepts that we examined

above. Two indictments dominate the assault: that amateurism is not real and that collegiate athletics is exploitation.

### *Amateurism Is Not Real*

The first charge is that amateurs as defined by the NCAA no longer exist and may never have existed. I think this criticism is accurate but irrelevant once we understand amateurism as a structure of motivation and aspiration. An aspiring elite teenage athlete requires a large infrastructure as well as the time, attention, coaching, and resources to develop. Nothing in the NCAA ideal of athletics as an avocation played for love and benefit is incompatible with this. Grafting this structure of aspiration onto the life of a student in a college gives the ideal greater depth and reality since it recognizes that being a student requires money, effort, and infrastructure. Education is not free.

Succeeding as an elite amateur in any domain motivates individuals to seek professional-level skills. This drive grows from mixed motives of love of the activity, desire for glory and self-esteem, and desire to excel and be the best. All these fit with the ideal of being an elite amateur as well as being a "student of the game."

In the United States the average sixteen-year-old elite amateur athlete will be active nine to twelve months a year traveling, practicing, and playing the chosen sport. All of this must be paid for. While on the road, the athletes need meals, transportation, and uniforms, and the "sponsoring" team or tournament must provide locations to play and practice as well as recognition and housing. Often these expenses are covered by parental fees, but just as often local or national business sponsors defray part of the cost. Sometimes scholarships or reduced fees are given to high-quality athletes of limited economic means. The narrow ideal of amateurism as defined by the NCAA has ceased to exist for most twelve-year-old U.S. athletes, but the enriched definition covers them.

This is the deep dilemma with the narrow ideal of amateurism. An elite athlete cannot compete or develop without significant resource backing. Unlike the international models that see governments or sponsored clubs taking over the lives of thirteen-year-olds and channeling them in athletics pipelines, the United States allows diverse solutions to this dilemma. Any approach, however, struggles with the NCAA insistence that being an amateur involves a limited and untainted motive structure and also that the individual not get "paid" a salary or money beyond what is absolutely necessary to sustain the ability to compete and develop, especially since the NCAA unduly narrows the scope of what is actually needed to sustain a young athlete.

This indictment maintains that amateurism is impossible to sustain as an ideal. More fascinating variations argue that because amateurism is impos-

sible and because the resources required to become an athlete are distributed by class, amateurism may even function to exclude individuals. Youth from different backgrounds may not have access to the entry points of modern youth athletics. These class differences may also influence the pathways for student-athletes such as funneling white middle-class players into soccer or volleyball and black under-class players into basketball or football. These arguments often end up advocating for a European system or unfettered payment at a very early level. In a sense, this may all be true, but it is irrelevant. It requires modifying the ideal and probably requires more direct resource investment in support of amateurs from some backgrounds, but these realities require a modification, not elimination, of the ideal. The argument also essentially ignores the ideal's attempt to link education and sport in a way that neither international nor direct payment models can approach.

### *Exploitation*

The popular press promulgates another widespread assault on amateurism. In a voice dripping with sarcasm, the national host of a widely respected sports program announces, "Everyone makes money but the student-athletes." The general public and sports pundits are not referring to thirty-one of the sports supported by the NCAA for championships nor do they cover 375,000 athletes in these sports. In particular, they refer to would-be professionals and address less than a thousand athletes even in Division I.

The argument seems to go like this. The universities get national visibility and status from having their teams appear on national television and radio. The athletic departments have large numbers of employees in event management, marketing, tickets, facilities, training, and health care who make very good salaries, and all these salaries are made possible by the players on the field. But above all, the commentators point to the extremely high salaries and celebrity stature of coaches of the elite teams.

An entire array of associated businesses gain in this ecosystem. Media networks are devoted to coverage of college football and basketball. Entire ecosystems of web-based games and fantasy networks depend upon them. Ecosystems of bloggers and commentators revolve around the exploits of fourteen- to twenty-two-year-olds. Recruiting sites make money by following and evaluating students as young as ten years old.

Finally, professional teams and leagues gain immense advantages from the structure of modern college football and basketball. Unlike international models in which teams or countries take on children and develop them or the baseball model in which teams can draft high school students and train and develop them, U.S. professional basketball and football use college sports as

their developmental leagues. The leagues have created intricate rules to govern the interface between amateur college sport and professional paid sport.

Universities gain; university staff gains; coaches gain; certainly television and the world of pundits gain; fantasy football players gain as do the makers of computer games. The accusation focuses upon the disparity between what student-athletes gain and the huge returns to everyone else.

This approach accuses everyone of hypocrisy where since people are making money off student-athletes but not giving them any reasonable return. If true, college football and basketball are exploitation pure and simple. More vitally, this position would imply that the students suffer from “false consciousness,” believing they are actually amateurs and students when they are nothing more than unpaid professionals (Zimbalist 1991).

The indictment gains traction from a technical distinction that is very important. The grant-in-aid given to student-athletes covers room, board, and tuition with some allowances for books. In reality, the true cost of attendance at college is usually \$2,000 to \$3,000 more and covers such things as laundry, transportation, hanging out, or going home to visit parents during holidays. This difference can cause great distress for the least well off of college athletes. Many members of the NCAA have argued that awards for the true cost of attendance would amount to “paying” the athletes. Also, scholarships are granted for one year only because a one-year grant should encourage high performance, but also can lead to coaches abandoning players—thereby making players vulnerable to asymmetric power between coaches and players. The entire situation thus reeks of an exploitative and one-way power relationship.

### **Rethinking Amateurism**

I believe the ideal of amateur student-athletes can still be defended as one goal to justify and guide intercollegiate athletics. The present NCAA definitional focus upon “being paid” as the crucial difference does not do justice to the reality of being an elite amateur. The definition does not address the true resource cost of being an amateur nor the complicated legitimate motives that drive an elite amateur. The NCAA’s evolving list of “exceptions” around international players or dual-sport athletes underlines its limits (Abbey-Pinegar 2010). This discussion about refining amateurism is not new to the NCAA and will continue requiring renewal and reevaluation of the ideal on a regular basis (Byers 1995; Freedman 2003; Rickey 1955; Suggs 2000).

I propose we understand amateurism as a structure of moral and psychological motivation and aspiration. This structure resembles the drive for mastery, achievement, and self-worth that amateur and paid professionals live by in any area. It grows from the classical ideal of *arête*. This amateurism

accommodates a wider range of motives and ambitions and acknowledges the real expenditures undergirding amateur endeavor. It should be wedded more closely to being a student. Many of the rules about not getting extra pay or special advantages are less about amateur status than about what it means to treat and respect an individual as a student.

This model addresses some of the conundrums that swirl around the NCAA's ideal of amateurism. The present intercollegiate landscape is changing very fast in terms of wealth, stresses upon campuses, unsustainable economic models, class distinctions, and reform movements. I do not have clear answers to the many issues, and the issues are changing at lightning rates (Robertson et al. 2011; Wolverton 2012). Most answers will need to be rethought as unanticipated consequences arise or new technologies or developments emerge. I do believe, however, that this approach to amateurism can guide us through two of the three major vulnerability points of modern amateurism regarding staying in and leaving school. It also suggests several directions that the modern debate might pursue. Let me mention four.

First, this approach reinforces the importance of investing in and supporting the athlete as a college *student*. This must be addressed in order to answer the exploitation argument but also to help limit the temptations to accept illicit benefits while in school. It requires a multipronged approach that involves aligning incentives of coaches to reward student success, creating strong and certain penalties for schools that abandon student athletes, and providing support and rewards for programs that seek to buttress academic support.

The NCAA, conferences, and schools should press for strong program support to make the lives of student-athletes true to being a student. It is clear that elite athletes driven to excel, win, and keep their spot on the team will devote thirty to forty hours a week to practice of their sport. Even with stringent rules on formal practice time limits, committed athletes dedicated to winning or gaining a spot on the starting team will perform the extra work (Dobel 2010). This means that NCAA rules should require both academic and resource support for such a life as well as a structure to encourage students to make progress under the stresses of athletic competition.

This begins with the ongoing effort to align the incentives of coaches and administrators with ensuring that student-athletes are supported as students. The rules that tie eligibility to ongoing academic progress and meeting milestones are only the beginning. The rules need to relentlessly force coaches and schools to graduate educated student-athletes. The present punishments for schools with low graduation rates need to be increased. Losing scholarships for low graduation rates over time is critical. The more the penalties apply to real-time athletic results rather than long-term results increases the incentives to act each year and not falter and then recover.

Recent policy initiatives that ban schools with consistently low graduation rates from the NCAA tournaments or bowl games move in the right direction. These academic penalties need to be clear to schools and enforced with minimum exemptions. Clarity and transparency are critical if the rules are to earn real albeit reluctant acceptance. Schools and coaches must believe that the playing field is level and that academic rules are fairly enforced. All these suggestions work because they touch the coaches' incentives and make the students' ability to get an education and graduating and getting an education a fundamental aspect of the coach's success. Far more than giving bonuses for graduation rates, these changes will matter.

The NCAA and conferences need to deploy their wealth to increase academic support at colleges and especially at ones with less wealth. Most of the media wealth is vacuumed up by facilities, coaches' salaries, and attempts to minimize the internal subsidies. It will take conscious legislation pushed by university presidents at the conference level to cleave off some funds mandated for academic support services. One way to do this would be to require an initial year of academic residence for the most at-risk student-athletes. This year would limit practice time, prohibit competition, and focus upon academic support and acclimation to college academics, yet it would keep four years of eligibility. This added academic investment would be repaid with better-prepared students and richer academic experiences for student-athletes. It would also decrease some of the recruiting pressures because some of the highest-risk elite athletes would have to sit a year rather than immediately participate in sports. It would help limit the impact of the notorious "one and done" practice by which coaches seek out exceptional basketball athletes who will "go pro" after only one year of participation at the college level.

Matching grants could be made available to schools that design programs to increase academic support and overcome lagging performance. Conferences could require schools to meet certain minimum expenditure or percentage investments in academic support in order to remain a conference member. Programs that demonstrate increases in academic progress could be rewarded with extra funds. Many creative approaches exist, the main one being that the NCAA and conferences need to provide incentives and resources to support student improvement as well as penalties for academic negligence.

The real answer to the exploitation charge lies in getting young student-athletes real educations that prepare them for a life after sports. Legitimate college degrees result in more than \$1 million in earning power over a lifetime. Colleges and the NCAA need to be public and up-front about the serious costs that are associated with supporting elite amateur competition at any level. All the resources spent on this amateur infrastructure represent investments



in the competitive experience of student-athletes. The mean expenditure on student-athletes by Division I programs amounts to \$84,000 (Dobel 2010; Knight Commission 2010).

Getting a real college education carries even more weight since most professional athletic careers average only three to five years. By the age of twenty-seven, even the very few successful paid athletes will be on their own. A startlingly high percentage of retired paid professional athletes find they are bankrupt shortly after retirement (Davis 2012; Pablo 2009). The professional leagues are zero sum games in many sports. As a player ages, younger talented players enter the pipeline each year; this places enormous pressure upon athletes and accounts for both how few succeed and also for the very short careers. At an age when many professionals are just beginning to launch their careers, most paid professional athletes' careers are over.

The NCAA actually has it right. Even successful paid professional athletes end up living sports as an *avocation* by the time they are thirty. A combination of modern incentives and penalties has increased the graduation success rate in revenue sports and among minorities. The NCAA should apply relentless pressure and funding to continue this trend. Unless schools invest some of their windfall in athletes as students to ensure graduation and education, the exploitation argument will carry weight (NCAA 2010d). This approach should also guarantee strong support and resources for athletes who wish to return to school.

Second, the argument about not “paying” student-athletes ignores the reality of the actual cost of being an amateur. The NCAA knows the true cost of supporting an elite amateur athlete. It should acknowledge the implications of this. Schools should be pushed—the NCAA cannot politically impose this on schools, given the voting structure—to acknowledge that amateurs require support to live at a reasonable level despite the opposition of colleges that lose money on athletics (Fulks 2011).

This understanding of amateurism directs attention to grant-in-aid that addresses the true cost of attendance. Permitting student-athletes to live at a reasonable and frugal level similar to what other college scholarships permit should be done and is consistent with the cost of amateurism. This is not “pay for play” but acknowledging the true cost disposition of being an amateur. The time investment of modern elite student-athletes reinforces this because they do not have time to work part-time jobs during the school year (NCAA 2011b). While the NCAA is seeking a permissive rule on cost of attendance to avoid a phalanx of opposition, it should require conferences that wish to participate in NCAA championships to develop four-year plans to bring their student scholarships up to the level of attendance appropriate to their geographic area.

Moving to a four-year scholarship commitment would also be truer to the student and amateur status, but is less important than permitting true cost. Nothing in the revised ideal of amateurism requires that student-athletes be penalized economically for their status. Many coaches and even athletes resist four-year scholarships because of their putative impact on performance motives, but enough coaches have abused the power to make it a serious option. Four-year scholarships do address the asymmetry of power between coach and player. These changes would do justice to the true cost of being an amateur and also ameliorate many of the needs and temptations that lead student-athletes to sell paraphernalia or accept small cash advances from boosters or agents. These changes will not end the practice, but they would mitigate the motives for the most economically disadvantaged students.

The cost of attendance and four-year scholarships could be extended to address another injustice. Too many schools abandon injured athletes who can no longer play. This compromises their ability to stay in school. Athletic scholarships should provide that student-athletes who are injured and cannot play because of medical disqualification are still guaranteed their scholarships rather than be forced off teams and out of school.

At the present time, the presidents of NCAA institutions are pushing to permit cost of attendance and four-year scholarship offers. Given the immense opposition based on class, these presidents are deploying strong constitutional methods to achieve this, but the proposals face real resistance from middle-level schools and many coaches. The reforms are still in the air as this chapter goes to press. They could pass in watered-down form or with longer lead-in times. The cost of attendance supplement will be less than it should be and will be permissive rather than mandated. It might also be limited to "need," which would limit the cost but still address the most vulnerable student-athletes. Four-year scholarships could also be available in permissive form. If the reforms pass in permissive form, I believe that the market will drive schools to make these offers. Once a school or conference offers them, it will gain a competitive advantage and others will reluctantly follow. If the reforms fail, the issues of justice and corruption surrounding the proposals will not disappear.

Third, the NCAA could make substantial revisions in how it relates to the paid professional aspirations of college athletes. The career aspirations of student-athletes match those of other students and flow legitimately into student ambitions to prepare for professional expertise after school. Some 98 percent of NCAA student-athletes will enter the nonathletic world of life and jobs. Some of the psychological, social, and character attributes developed as athletes can help them, but ultimately their success will derive from the college education they received.



This approach suggests possible changes in how to address the leaving of college and entering a paid career. It would permit and even encourage early contact with certified agents and certified financial advisers. Conferences and schools should be helping students understand their options and how to get good representation when student-athletes face professional career choices. The more the NCAA encourages open contacts with legitimate agents, the better it respects the student in the student-athlete. The NCAA should help student-athletes get competent advice they need to consider a career as a paid athlete. The NCAA, conferences, or neutral bodies need to ensure that impartial and professional bodies provide these initial contacts since students rightly are unsure if their schools have their best interest at heart when the choice is between staying an extra year or going professional. This approach might deter the clandestine efforts of "agents" and family and "facilitators" to connect with students.

As an extension, just as the NCAA permits a college player to be a paid player in one sport and an amateur competitor in another, little real reason exists to prevent athletes from participating at real market rates in professional teams in their sports during summer seasons as long as the athlete is making due academic progress. Many students participate in paid or unpaid internships for future careers; athletes should have the same options. The range of options to accommodate student career aspirations should be as wide as possible compatible with reasonable enforcement strategies.

Fourth, the NCAA rules can continue to promote academic incentives into high schools. One of the great NCAA successes has been the improvement in graduation rates. This arises partially from the progress toward degree requirements but also from the increase in high school core requirements and GPAs. The high school core and GPA provide very powerful predictors of graduation success. The NCAA should be ratcheting up the high school core with greater emphasis upon English, math, and science requirements. An increase to sixteen courses with strong distribution requirements will change the motivation structure of young student-athletes.

Past experiences with changing the high school core show that student-athletes, driven by their desire to stay eligible and play, will change their behavior and meet the new standards by taking harder courses. They thus start college better prepared. This increase in core plus strong high school GPA requirements can be supplemented by letting high-risk students into college but requiring a year of academic preparedness. This year would still permit four years of sports eligibility but limit practice and travel in the first year to permit students to focus heavily upon academics. To be honest, if the NCAA had the will and support, it should abolish freshman eligibility for all student-athletes whose high school GPA averages fall under a relatively high

standard—such as 3.2. Returning to freshman ineligibility has the advantage of clarity and simplicity as well as forcing schools to take the first year of a student-athlete as a student year.

I have no sure solutions, and many more creative options exist to explore. I do believe that rethinking amateurism as a complex moral and psychological motive and aspiration authorizes the NCAA to address the reality of *student-athlete* life. This ideal addresses two of the major contact areas of staying in school and traversing the boundaries of college athletics and paid professional leagues.

## Conclusion

The NCAA has it right. The vast majority of student-athletes, even in elite revenue sports, will experience athletics as an *avocation* given the course of a person's life. Coaches and universities know that the statistical reality for all but the ultra-elite is that college sports will be an avocation. For most athletes, even a sojourn in paid professional leagues will end up looking like an avocation in the course of a life. This means that being an amateur elite athlete is a way of being in the world and does have a reality.

The present NCAA definition of amateurism is too narrow and ignores the fact that all students legitimately aspire to use their student experience as preparation for careers. Once the idea of amateurism encompasses its own foundations like glory, championship, and self-worth and is connected more clearly to being a student, then sponsoring championships and providing legitimate cost support in terms of infrastructure and scholarships but also the full cost of attendance are quite legitimate and logical extensions of the ideal (Fitt 2009; Lazaroff 2007).

Athletics even as an avocation generates passionate devotion and high levels of excellence and achievement for a limited time. It provides an intrinsic satisfaction as well as diverse other joys. However, it costs resources to sustain that life, and colleges provide that sustenance to make an amateur life real. I think the ideal deserves respect and rethinking to keep it relevant and answer its critics.

## Note

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1. This chapter will not examine the array of forces growing from the multibillion dollar gambling industry that clings to intercollegiate sports. It will not cover the world of fantasy sport leagues fastened like limpets onto college athletics. Neither

will the chapter discuss the issues surrounding the usage of college players' likenesses and names in multimedia games and fantasy leagues (Carrabis 2010; Moore 2010; Mueller 2009; Warta 2003).

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## **Part III**

### **Individual Volition in Public Institutions**

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## From Classical Rationalism to Psychological Realism in Ethical Decision-Making

*James S. Bowman and Jonathan P. West*

There is little doubt that the use of various decision-making models can considerably enhance ethical discernment. These approaches typically focus on step-by-step techniques, stages in decision-making, and/or sets of principles—for example, Nash's (2010) twelve steps, Blanchard and Peale's (1988) three questions, and Josephson's (1992) three principles. In so doing, the ethical dimensions of an issue can be explored and potential solutions identified. The seductiveness of such tools is evident as their use is superior to rigid rules, self-interest, and/or sheer opportunism. Indeed, this study employs one of these techniques to examine a case.

These same methods, however, have significant limitations as few have questioned the assumptions underlying them. Philosophical ethics explains how rational people should act at the expense of how real human beings actually do behave. Implicit in the traditional approach is that people will recognize ethical dilemmas and how they should then act. Yet if the goal of decision theory is to predict conduct, it is not always useful to ask people, or offer prescriptions about, what they might do. Instead, behavioral ethics, drawing from psychology, is less interested in prescriptions and more focused on descriptions of how individuals really act. With that knowledge, researchers will be better positioned to suggest ways to encourage ethical conduct.

The discussion begins by describing one of these classical methods, a comprehensive tool that encompasses results-based utilitarian ethics, rule-based duty ethics, and virtue-based character ethics. The technique is applied to a

case to demonstrate its decision-making utility. Insights from behavioral ethics are then used to suggest that such models are problematic. The discussion and conclusion explore the implications of the findings.

### **A Decision-Making Method**

While various frameworks shed light on how issues might be considered, one is particularly helpful because its broad scope reduces the chances of an incomplete, flawed decision.<sup>1</sup> This tool, the “ethics triangle” (Svara 1997, 2007), recognizes the complementarity and interdependence of the imperatives in three schools of thought based on

- results of an action (consequentialism or teleology)
- pertinent rules (duty ethics or deontology)
- personal integrity or character (virtue ethics)

When considering results, the question is, “Which policy produces the greatest good for the greatest number?” (e.g., “Would I want my decision to be in the newspapers tomorrow?”). In contemplating rules, the issue is, “Would I want everyone else to make the same decision that I did?” (e.g., do no harm). From the virtue ethics vantage point, one might ask, “What would a person of integrity do?” (e.g., seek the golden mean between the extremes of excess and deficiency; courage, for instance, is the mean between foolhardiness and cowardice). Accordingly, this comprehensive, yet succinct tool can help provide a defensible evaluation derived from consideration of results, rules, and virtues.<sup>2</sup>

Although the synthesis developed from triangulation analysis may not provide definitive solutions, it offers guidance by teasing out the underlying logic by which decisions are justified. Importantly, an overreaching application of a single approach at the outer reaches of the triangle, at the expense of the other approaches, holds considerable dangers—expediency (results-based ethics), rigid rule application (rule-based ethics), and self-justification (virtue-based ethics). In light of the shortcomings of the individual points of the triangle, it is evident that this eclectic technique can be helpful.

### **Case Analysis and Discussion**

Professionals, by definition, are obligated to consider results, respect rules, and develop virtues in order to justify their decisions. Indeed, each philosophy in the ethics triangle is attractive to decision-makers:

- The results-based approach is useful for administrators in seeking the common good for the majority of citizens.
- A rule-based strategy is appealing to managers who are obligated to follow the principles found in the Constitution, court cases, and laws and regulations.
- Virtue-based ethics is compelling for officials because it is a personal approach informed by one's character that nurtures individual and collective well-being.

Because credible arguments can be developed for each approach, deliberations stimulated by the ethics triangle could provoke moral imagination in seeking a solution.

Ethical issues—both in appearance and reality—are part of being a public servant.<sup>3</sup> Consider this brief case:

For many years, Frank and Mark have been close friends. They went to high school together and were college classmates. They served as best man at each other's wedding. Their wives, Meg and Flo, are good friends. For the past ten years, Frank and Meg have taken Mark and Flo to dinner on Mark's birthday. The dinner is just something Frank insists upon doing and it has become something of a tradition. He can well afford it—Frank owns the largest plumbing supply business in the state and does more than \$1 million in business each year with the city.

Mark was recently hired as an aide to a city councilman who chairs the committee that oversees procurement contracts, including plumbing supplies. His birthday is coming up in a couple of weeks. Frank calls to say that he and Meg have a special treat for Mark's birthday dinner this year. Frank has made reservations at a fancy new restaurant that everyone is talking about.

Does Mark accept?

Thinking about the results part of the ethics triangle, Mark considers what is the greatest good for the greatest number. On the one hand, the most happiness and the least amount of harm may be achieved by accepting the invitation. After all, most people do not trade their integrity for gifts. There is no valid reason to avoid the party; indeed, the friendship may be put at risk if the invitation is declined because Frank may be insulted.

On the other hand, the greatest good could be achieved by ensuring that the public has no reason to be suspicious about governmental decision-making. A key utilitarian guideline is, "Would I feel comfortable if my action was on the front page tomorrow?" Clearly the greatest good goes well beyond personal acquaintances. The argument is that most people do not impugn

their honor for gifts. But while the premise of this contention may be correct, the conclusion does not follow. Thus, the counterargument is in the form of a challenge: name one good reason why an official should accept presents. This includes recognition that corruption requires nothing as vulgar as a *quid pro quo* because gifts introduce the possibility of favoritism. Bribery is not the issue; rather, it is access and influence. It also includes an understanding that individual gifts can give rise to institutional corruption—the creation of a system that encourages decisions based not on the substance of issues, but on favoritism—as gifts can be unethical on the part of givers and receivers.

In contemplating the rules angle, the question is “Would I want everyone else to make the same decision that I did?” Mark’s duty in this case is to cultivate friendships, something Aristotle rightly believed should be universal practice in human relations to encourage ethical behavior. Rigidly applying rules, such as conflict of interest regulations, when they are not germane is overreaching. So long as existing laws are followed, there is no basis for rejecting the invitation. Yet it is not clear that it would be acceptable if everyone routinely accepted such arrangements. Mark’s responsibility as a public official is to nurture citizens’ confidence in government. Participating in activities that arguably raise suspicions about decision-making should not be a common practice.

From the virtue ethics vantage point, what would a person of integrity do? According to this philosophy, Mark must continuously nurture his character and the character of the polity. By accepting the dinner invitation, he will maintain and enhance a deep friendship. This helps nourish individual character and the strength of community ties. Turning down the invitation demonstrates pointless self-righteousness. Yet because it is not reasonable to expect citizens to delve into the particulars of specific cases, Mark should not attend. Taxpayers, after all, are more likely to be concerned about the effective use of public monies than the personal friendships of governmental employees. Thoughtlessly accepting the invitation—and ignoring other viewpoints—is simply expedient, hardly an ethical standard of decision-making.

This case is based on a scenario presented a generation ago to attendees at an International City and County Management Association (ICMA) convention. There was no consensus among conferees: they split almost evenly on whether or not Mark should accept the invitation. ICMA’s answer, in advising its membership on how to deal with the situation, does not directly allude to results, rules, or virtues. It does, however, indicate that yes, Mark should accept based on the following reasoning:

Public service does not require that you give up previous acquaintances and friendships. What is required is that at any point in the future in which your friend’s business is involved, i.e., contract negotiations, you disqualify your-

self from influencing the decision in any way. If you decide not to go with Frank, you are still ethical, but probably over-zealous. ("Ethics" 1982)

By interpolation, ICMA does not think that all public officials should—without qualification—accept such invitations because universalizing such practice does not automatically serve the greatest good and would be unwise. The ICMA position also, more directly, reveals sensitivity to the virtue of care and friendship. The golden mean would be to find a prudent course of action the lies between the extremes of blissfully accepting and self-righteously rejecting the invitation—that is, Mark could pay his own way and/or recuse himself from any future committee actions involving Frank's business. A true friend would, after some discussion about Mark's new role in government, understand the situation and not take the decision personally.

Responsible policy-makers, by definition, are obligated to develop virtues, respect rules, and consider results. The ethics triangle cannot produce a final, perfect decision for all seasons. Instead, a conscious attempt to reconcile conflicting values highlights a key function of decision-making: generating alternative viewpoints, systemically evaluating them, and crafting a considered judgment. The technique enables the management of ethical ambiguity and provides help in making the inevitable compromises. When choices are guided by benevolence, creativity, and an ethic of compromise—a moral tenet of democracy—there is at least the satisfaction that the problem has been fully examined and that the decision can be rationally defended.<sup>4</sup>

This eclectic, pluralistic technique to adjudicate difficult ethical issues can be demanding as it requires considerable discernment. Yet in light of the limitations of each point in the triangle, there is little option. Such an ethic is necessary given the complexity of the human condition. The approach enables the user to learn to be ethical by developing well-rounded and well-grounded decisions.

Lessons from cases like this one include an understanding that managers are moral agents responsible for their own actions, that doing right things is likely to be interpreted by others differently, that appearances matter, that ethical awareness may be accompanied by self-delusion, that exemplary behavior is important, and that ethics means engagement. The implications of these lessons include the need to have knowledge of ethical principles and codes, to respect the rule of law, to serve the public interest, and to use ethical reasoning tools (Menzel 2010, 225–231).

## **Behavioral Ethics**

While rational decision-making models are certainly valuable, an emerging school of thought—behavioral ethics—finds that these same tools have



significant shortcomings. One key issue is the frequent absence of a relationship between moral theorizing and ethical action. As Gazzaniga (2008, 148) observes, "It has been hard to find any correlation between moral reasoning and proactive moral behavior. In fact, in most studies, none has been found." Similarly, Haidt (2001, 817) contends that "moral reasoning is rarely the direct cause of moral judgment." This suggests that other factors—unconscious biases, moral emotions, and personal intuitions—are likely to affect behavior (Shao, Aquino, and Freeman 2008).

Behavioral ethics, accordingly, draws on work in psychology and focuses on the actual conduct of the individual. It does so by examining psychological tendencies to explain human conduct. Not only does the rational model place considerable cognitive demands on people, but it also devalues unconscious, emotional, and tacit elements in making judgments, elements that can subsume—or even be the basis of—reason. Stated differently, the traditional approach is incomplete because it "fails to acknowledge our innate psychological responses when faced with ethical dilemmas" (Bazerman and Tenbrunsel 2011, 4).

This section identifies nine concepts or focal points from behavioral ethics research:

1. bounded ethicality
2. ethical fading
3. motivated reasoning
4. want versus should theory
5. decision framing
6. System I versus System II thinking
7. bias and errors
8. monitoring and sanctions
9. organizational context and infrastructure

Together they highlight the underlying psychology behind unethical conduct, actions that may be unintentional and based on inadequate information, improper application of ethical principles, and/or lack of awareness of the moral dimension of problems.

While these ideas are not necessarily new, what is new is the growing evidence that behavior is less under conscious control than believed. Instead of supposing people are rational, behavioral ethics investigates whether or not they act rationally in experimental situations.<sup>5</sup> The data suggest that humans are far less rational than assumed; rather than *Star Trek's* hyper-rational Mr. Spock, they can be more like the *The Simpsons's* emotional and prejudiced Homer (Arieli 2008; Bazerman and Tenbrunsel 2011; Brooks 2011). Feel-

ings, intuition, and perception are at least as significant in affecting behavior as logic, rationality, and calculation. Indeed, emotion can be the basis of reason.

### ***Bounded Rationality/Bounded Ethicality***

Bounded rationality is associated with Herbert Simon, who used the idea to describe a “behavioral model [in which] human rationality is very limited, very much bounded by the situation and by human computational powers” (1983, 34). Individuals often do not have complete and accurate information and, even if they did, they have a less-than-perfect capacity for information-processing to reach an optimal decision. Simon recognized that the demands of rational decision-making are severe. As a result, people often simplify and “satisfice” by arriving at solutions that are satisfactory and sufficient.

Suboptimization can overlook important information, omit stakeholders, or give insufficient attention to long-term consequences. A decision-maker’s rationality also may be affected by self-interest, unintentional blindness (emphasizing one task to the exclusion of others), false assumptions, failures in problem definition, bias, and visceral responses to ethical situations (Bazerman and Chugh 2006). Bounded ethicality, in short, may cause otherwise ethical people to make questionable decisions.

A frequently cited example of bounded ethics and unintentional blindness is based on an experiment conducted by Neisser (1979) and subsequently modified by Simons and Chabris (1999). Both asked participants to view a video of two groups of athletes, one team dressed in dark and one in light clothing, repeatedly tossing basketballs. Instructions to participants were to count the number of passes made by one of the two groups. In the earlier study, a woman with an open umbrella strolled across the basketball court; in the follow-up experiment, someone in a gorilla outfit walked across the court pounding his chest. Most people failed to see either the woman or the gorilla because they were counting passes so intently that they were blind to something right in front of them (readers can try this at [www.blindspots-ethics.com/neisser](http://www.blindspots-ethics.com/neisser)).

Bounded ethical awareness can be seen when decision-makers fail to consider relevant information or to detect an ethical problem when confronting a situation. The pressures and demands confronting today’s managers, according to Chugh (2004), lead them to rely often primarily on habit instead of intentional deliberation.

In the dinner case considered above, Mark might have quickly accepted the invitation from his close friend as part of a continuing birthday tradition without giving thought to the possible appearance of impropriety. Even if

he used the triangle, it would be easy to rationalize the invitation as trivial compared to other decisions he makes. To take another situation, teachers or principals might do things—such as changing student answers on a standardized test—that they normally would not do if they consciously thought about it; for example, 178 principals and teachers in Atlanta schools fraudulently raised test scores so their schools would meet district targets (Severson 2011).

### *Ethical Fading*

Ethical fading is “the process by which the moral colors of an ethical decision fade into bleached hues that are void of moral implications” (Tenbrunsel and Messick 2004, 224). This is a form of self-deception in which individuals, even those who may have completed ethics training, fail to recognize the moral dimensions of a decision. If they do not recognize that the decision they are about to make has ethical implications, they are unlikely to let ethical considerations influence them.

Bazerman and Tenbrunsel (2011) contend that fading takes place when visceral responses occur at the vital decision point and become dominant. People in high-stress, competitive situations where prestige, income, and job security are at stake may become so intent on achieving performance targets (e.g., teachers and principals cheating to meet “unreasonable” test benchmarks) that the ethical nature of decisions pales in significance.

There is also a tendency to make a decision and then engage in faded, faux moral reasoning (e.g., using tools like the ethics triangle) after the fact to justify the determination that was already made. In the example of the dinner invitation, Mark might have accepted happily on the spot only later to rationalize his decision by misusing more traditional philosophical approaches. We might speculate that something similar took place among school personnel in Atlanta. This leads to consideration of the “want/should” theory discussed below.

### *Motivated Reasoning*

Facts are not likely to mean much if someone believes something different than the facts dictate. Motivated reasoning suggests that individuals are psychologically motivated to maintain their existing evaluations independent of facts (Redlawski, Civettini, and Emmerson 2010). Opinions are based on beliefs; people feel what they think; “emotion assigns value to things and reason can only make choices on the basis of those valuations” (Brooks 2011). Thus, if something or someone is disliked, contradictory information will be discounted (to the point that the object of dislike will be loathed as much or more than before).

The use of this natural defense mechanism is psychologically easier than to change feelings; evidence in service of those emotions is accepted, while that which contradicts them is not. Not only does changing feelings take a lot of data and the motivation to want to change, but also it is difficult to admit error. This phenomenon is complemented by motivated blindness—the failure of people to notice others’ unethical behavior (Bazerman and Tenbrunsel 2011, 81). Like many behavioral science findings, these mechanisms happen at the subconscious level.

In the dinner scenario, Mark, confident in his own judgment, could be annoyed by the suggestion that something as innocuous as his birthday could interfere with his personal motivation to maintain his public integrity at a dinner celebration. Concerning the Atlanta schools, once the test score manipulation was initiated, changing the behavior (in light of the promotions and commendations it engendered) became increasingly difficult. Not only was it harder than continuing (in this instance, the problem lasted ten years), but due to motivated blindness it was unlikely that others would question what was happening. People may feel before they think.

### *Want Versus Should Theory*

The distinction here is that between the “want” (emotional and impulsive) self and the “should” (thoughtful and deliberative) self (Tenbrunsel et al. 2009, 5; see also O’Connor et al. 2002). “Want” choices frequently occur in the present, while the “should” choices often take place before and after the decision. Ironically, this separation of the two selves can allow people to think they are more ethical than is actually the case.<sup>6</sup> As Tenbrunsel and colleagues observe,

prior to making a decision that has an ethical dimension, we believe we will act in line with the “should” self; in the aftermath of an unethical decision, we distort our perceptions of our behavior so that it looks as if we did just that. However, at the time of the decision our “want” self dominates and we behave unethically. (2009, 14)

In the birthday invitation example, Mark wants to go to dinner and may readily accept, but later his “should” self may have second thoughts about appearances. Prior to the Atlanta cheating scandal, teachers and principals would probably have been appalled at the idea of someone changing test scores. At the moment of decision, though, these same individuals succumbed to the pressures of their “want” self and proceeded to engage in unethical conduct. The goal-oriented educators wanted their school’s performance to

meet district benchmarks, but later (much later in this instance) their “should” self was activated with questions about the implications of altering test results (indeed, eighty-two of the people involved confessed). In both instances, however, it was possible to rationalize that “after all” the ethical conduct was considered, however superficially. The next behavioral ethics concept is germane to this discussion.

### *Decision Framing*

Framing effects occur when similar situations generate different outcomes because of the way they are presented or perceived (Kern and Chugh 2009).<sup>7</sup> Many decisions have a business and an ethical aspect, and they may give primacy to one or the other dimension. If the issue is seen primarily as a business concern, it could lead to ethical fading and allow the “want” self to be dominant. In contrast, when the decision is framed primarily in ethical terms, the “should” self emerges and fading would not occur.

For example, suppose that Mark accepts the dinner offer more as a personal friend than a public official. Likewise, school personnel, under pressure to “perform,” may have framed the testing program as a business—not an ethical—matter. As a result of self-deception, decision-makers may not recognize the moral components of decisions. Tenbrunsel and Messick (2004, 114) use the term “ethical cleansing” to describe how people “often unconsciously transform ethical decisions into ones that are ethically clean.” Recognizing both the business side and the ethical dimension of decisions is crucial if one seeks to do things right and do right things. Just as decisions can be defined in two ways, so too can cognitive systems, as discussed below (Banaji, Bazerman, and Chugh 2003).

### *System 1/System 2*

System 1 is a rapid, intuitive way to process information and yield visceral “hot” responses, or a gut reaction, as a useful guide for daily decisions. System 2 is a slow-paced, “cool,” and deliberative approach to handle information that weighs the pros and cons of an issue (similar to the ethics triangle). Ethical judgments made under pressure might rely on System 1 thinking when System 2 is warranted. Bazerman and Tenbrunsel (2011, 36) caution that relying exclusively on System 1 thinking can “widen the gap between how we want to behave and how we actually behave.” Maintaining an ongoing dialogue between System 1 and System 2 may reconcile the two or at least help explain behavior. As discussed, accepting the dinner invitation and altering test scores would have benefited from an interaction between the two systems.<sup>8</sup>

In fact, moral judgment results from rapid moral intuitions, followed as needed by more deliberate moral reasoning. Jonathan Haidt defines moral intuition as “the sudden appearance in consciousness of a moral judgment, including an affective valence (good-bad, like-dislike), without any conscious awareness of having gone through steps of search, weighing evidence, or inferring a conclusion” (2001, 820). He argues, using social-intuitionist theory, that intuition is the default process for arriving at routine ethical judgments in a quick, automatic, and easy way, but when a deeper examination of a dilemma is required, reasoning is pursued. The reasoning process then provides a rationale. Haidt contends that rationalist models are less inclusive than social-intuitionist models, with rationalists considering emotions, social settings, and social interactions as inputs that advance or impede reasoning. By contrast, social-intuitionist models integrate reasoning, emotion, intuition, and social influence in explaining moral judgment.

System 1 thinking and social-intuitionist theory suggest, then, that moral reasoning can be insufficient in understanding ethical behavior. Ethical behavior may occur automatically without extensive cognitive deliberation. Blasi describes this process:

In some cases, rather than seeing moral behavior arise from a process marked by struggle, inner battles, and hesitations . . . most desires are so strong and unconflicted, so central in the actors’ motivational system, and so identified with their core identities, that moral action follows from a kind of spontaneous necessity. (2005, 84–85)

Such a person’s moral motivation—if asked “Why be moral?”—would be “That is who I am” (Trevino, Weaver, and Reynolds 2006, 962).

### ***Bias and Decision-Making Errors***

The next behavioral ethics insight deals with cognitive distortions and unconscious biases that favor self-serving perceptions and influence behavior (see, e.g., Prentice 2003). These phenomena appear in many guises:

- stereotyping—judging people on the basis of their group membership (e.g., nationality, gender, race, occupation);
- focalism—focusing too much on a specific event to the exclusion of others that occur concurrently;
- overclaiming credit—overrating personal contributions to group efforts;
- confirmation bias—gathering information to confirm preexisting beliefs;

- hindsight bias—regarding things that have happened as being somewhat predictable and obvious;
- overoptimism and overconfidence—overestimating one's own knowledge and ability to make good decisions;
- ethnocentrism—believing that “our” way is normal and that other ways are inferior;
- self-serving bias—relying on judgments that are unduly influenced by decision-maker self-interest;
- euphemisms—using disguised language to convert unacceptable into respectable behavior (e.g., “collateral damage” for civilian deaths; “right-sizing” for layoffs).

The consequence of such phenomena—as well as bounded ethicality, ethical fading, framing, and System 1 thinking—can be unethical behavior that may occur slowly, incrementally, and unconsciously rather than in an abrupt shift. It might begin as a small infraction of little consequence, with the seriousness of the wrongdoing increasing gradually over time, leading wrongdoers to adjust their definition of an ethical standard. Moral seduction theory (Moore et al. 2006) posits that people can become morally compromised over time, a process facilitated by unconscious thought processes.

Professionals, for instance, tend to be confident and to view themselves as ethical people in control of their lives. Yet in both the dinner invitation and Atlanta cases, it is easy to see how overconfidence in one's own ability to make decisions is likely to affect what happens. Eventually this behavior could become the “new normal” for people, an adjustment to their definition of what is ethical. These cognitive distortions help justify questionable behavior and reconcile it with their self-image as an ethical person.

### ***Monitoring and Sanctions***

This next-to-last behavioral ethics tenet includes the counterintuitive role of sanctions and the nature of those sanctions. “Common-sense” approaches to monitoring and sanctions in order to promote ethical behavior may be ineffective and/or dysfunctional. Compliance systems (Bazerman and Tenbrunsel 2011, 113) can have a forbidden-fruit effect—that is, noncompliance may become attractive simply because it is forbidden. As discussed, when decisions are framed in business terms rather than ethical terms—and notwithstanding the existence of a sanctioning system—the decision-maker might view wrongdoing as a cost of doing business, allowing ethical concerns to recede from consideration.

This can lead to calculations of the likelihood of being caught or punished—rather than asking whether the action is the right thing to do. When situations



are relabeled as “business decisions,” ethical implications may be hidden, discounted, or disregarded, making it more likely that dubious behavior will result. In the dinner case, it would be expedient for Mark to underplay the importance of appearances. Similarly, in Atlanta, with both principals and teachers involved in erasing answers, rationalizing the behavior may have been relatively easy.

Gneezy and Rustichini (2000) confirmed this connection between framing, sanctions, and behavior with a practical case involving a new fine imposed on parents who arrived late to pick up their children at a day-care center. Unexpectedly, the number of parents arriving late increased rather than decreased. The explanation was that the payment led parents to view the matter as a business calculation, determine the cost of arriving late, and pay the money—rather than viewing on-time arrival as right behavior. A sanctioning system can produce less cooperative behavior as intrinsic motivation to cooperate is replaced by extrinsic motivation to respond to penalties. Tenbrunsel and Messick (2004) show that when a no-punishment procedure exists, people are more likely to see the decision as a moral one.

### *Organizational Context and Ethical Infrastructure*

Finally, organizational context can influence behavior in many ways: job pressures to behave unethically, unrealistic organizational goals, rewards or incentives to act improperly, and weak sanctions for questionable behavior and organizational cultures that normalize unethical conduct (Trevino, Weaver, and Reynolds 2006). The ethical infrastructure designed to counteract these factors and encourage right behavior includes robust formal and informal systems (Tenbrunsel, Smith-Crowe, and Umphress 2003).

The formal infrastructure includes communication (codes, mission statements, performance standards, training), surveillance (performance monitoring, hotlines, ethics ombudspersons), and management systems (evaluations, salaries, promotions, bonuses). Informal information systems also include communication (hallway conversations, informal training, stories), surveillance (personal observation and relationships, extraorganizational sources), and sanctions (group pressure, whistle-blowing). Together with the organizational climate, formal and informal systems can influence conduct. While systems and organizational climate may foster ethical behavior, under certain circumstances they can be counterproductive. In both the dinner and school cases, weak formal penalties and a permissive informal ethical climate could easily suggest that dubious behavior would be tolerated.



Given the findings from the behavioral ethics literature summarized above, what strategies might be used to improve individual ethical behavior? This topic, and some concluding comments, is considered in the next section.

## Discussion and Conclusion

The shift from a philosophical to a psychological approach to decision-making has an important implication for change: the focus should be on understanding psychological factors that lead to unethical behavior rather than emphasizing how people should behave. Because good people unknowingly contribute to unethical action, change needs to emphasize hidden, unconscious influences on behavior. The goal, for Bazerman and Tenbrunsel (2011), is to be ready for unrecognized psychological forces that occur during decision-making—that is, to learn to think before acting in a thoughtful manner.

Strategies for doing this include practicing for an upcoming event (role plays, for example), using precommitment devices to protect a desired action (bank Christmas savings clubs), promising oneself rewards for one's own behavior (e.g., a vacation), thinking about one's own eulogy, and considering how one would act if one's decision would appear on the front page tomorrow. In addition, creating time for reflection in the face of a superior's demand for a quick decision may be helpful: requesting time to think it over (no one is in a hurry for a bad decision), turning the order around by asking the superior for her advice, looking into whether the organization has a policy relevant to the situation, consulting with the department's legal counsel, and trusting one's intuition (if the decision feels wrong, it could be a warning signal) (Trevino and Nelson 1995).

Such tools can assist in problem framing, interfere with the "want" self and System 1 thinking, and moderate biases and errors. In the dinner case, the front-page caution might be useful; in the school testing case, a precommitment to frequent independent audits probably would have identified problems.

It should be evident that when human beings make decisions they often diverge from the classical rational model and its prescriptions. Many reasons, including the effects of the situational context, can explain the dishonesty of honest people and their lack of awareness of these effects. The heroic assumptions made by the traditional approach—that individuals are universally logical, possess full information, have the willpower to use it, and act in their self-interest—often do not hold in real life.

As discussed in this chapter, various irrational behaviors must be taken into account when choices are made. In so doing, behavioral ethics is transforming the way conduct is seen when individuals actually make judgments. Yet upholding ethical ideas under stress is the very reason for the classical

study of ethics; moral values are difficult to live up to. As Paul Moloney (2011) observes, "What gives meaning to behavior is purpose." This is why philosophy examines thought, not behavior.

If the prescriptions characteristic of the traditional model and the descriptions of conduct in the behavioral model are seen as mutually beneficial, more comprehensive understanding of the human condition may result. Such a synthesis promises that the quality of ethical decision-making will improve in the future.

## Notes

1. Parts of this and the next section are drawn from references not identified in order to protect personal identities.

2. "Ockham's Razor" cuts to the essence of an argument: use the simplest possible explanation of a problem, and make it more complex only when absolutely necessary; adding qualifications and explanations may make a position less elegant, less convincing, and less correct. Variations and further claims of the three philosophies are knowingly subordinated, as discussed below, in the interests of parsimony and clarity.

3. Some decision situations may be "easy" to analyze since they are right versus wrong "problems" (there is a clear right answer)—not right versus right dilemmas (there may be several "right" solutions, all of which nonetheless may be problematic). This distinction does not suggest that when the right answer is evident doing the right thing is necessarily straightforward; for nonethical reasons, it may be quite difficult. Indeed, in both simple and complex cases, ethics requires not just the rectitude to support the proper decision and refuse wrongdoing, but also the resourcefulness to devise honorable ways to deal with the problem.

Scores of public sphere cases, which include responses from administrators as well as the book's author, can be found in Menzel (2010). Among the many issues are those dealing with the ethics of commercializing a city's website (139–142) and hiring a supervisor's highly qualified friend (193–194).

4. It is important to keep in mind pitfalls when just one point of the triangle is emphasized at the expense of the others. For example, the results approach may be problematic because it is difficult to anticipate all possible consequences and because it may lead to expedient action (thus, when choosing among appealing outcomes, rule-based ethics and virtue theory should also be applied).

Similarly, rule-based ethics, if used alone, may lack compassion (Svara 1997) when truth-telling produces cold and inconsiderate behaviors (to compensate, benevolence in the virtue ethics, as well as the greater good from results-oriented ethics, might be applied). Last, the exclusive use of virtue theory is perplexing because of its intuitive and possibly self-serving nature (to be counterbalanced by utilizing the other two schools of thought). In short, an integrated approach helps to provide a defensible decision that takes into account results, rules, and virtues.

5. An underused and important tool is used in behavioral ethics: human subject laboratory experiments. Although college students are often participants in these trials, some experiments are replicated using business professionals with similar results (e.g., Bazerman and Tenbrunsel 2011).

6. A link between the want/should self-theory and ethical fading (as well as bounded ethicality) is evident. As Tenbrunsel et al. (2009) point out, when the ethical dimensions of a decision fade away, it enables the “want” self to appear.

7. Also see Thaler and Sunstein (2009), who argue that people’s behavior can be influenced in predictable ways without their realizing it; what is key is the “architecture” of a decision.

8. Joshua Green (2010) uses a camera metaphor (recounted by Brooks 2011, 290) that helps to explain the role of intuition in System 1. Automatic settings on the camera quickly and efficiently regulate the focus and shutter speed, but sometimes the settings need to be overridden, allowing for manual adjustment that, although slower, enables the user to accomplish things that could not otherwise be done. Similarly, a person may experience automatic ethical concerns, but then override them through a slower, in-depth reasoning.

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## Mirror Images

### Conflict of Interest in Politics and Psychology

*Andrew Stark*

In the ten-plus years since I published *Conflict of Interest in American Public Life* (2000), one of the most significant developments in “conflict-of-interest studies” has been its emergence as a full-blown topic for academic psychology. In this chapter I bring the understanding of conflict of interest that has evolved in law and politics for the governance of public officials—and that I discussed in my book—alongside the frameworks that psychologists have begun to develop.

My purpose is not to suggest that one is superior to the other, but rather that each has its own domain of applicability and that—in particular—the psychological approach is inapplicable to the political realm.

I begin by outlining the evolution of political approaches to conflict of interest, as set forth principally in *Conflict of Interest in American Public Life*. Specifically, I trace the transformation in the American understanding of “interest” from an objective to a subjective conception, and of conflict from a subjective to an objective framing. Next, I discuss what I will ultimately call the “newer” psychological approach, the approach to conflict of interest that has blossomed in the last ten years. I then discuss an “older” psychological approach that preceded it—one that dealt not with conflict of interest specifically but more broadly with biases and other encumbrances on judgment. As we shall see, the newer psychological approach reflects an objective view of interest and a subjective approach to conflict, while the older psychological

approach does the reverse: it adopts a subjective understanding of interest and an objective view of conflict. In other words, the evolution in the psychological understanding of conflict and interest has, in a loose sense, gone in one direction, while the evolution in the political understanding has gone in the other. Each, in effect, is the mirror image of the other. Finally, I discuss the ways in which the newer psychological approach is limited, both by the older psychological and the newer political approaches.

### **The Political Understanding**

In conflict of interest, the word “interest” refers to whatever it is that threatens to impair an individual’s judgment, while “conflict” arises if the individual’s judgment is then actually deemed to have been impaired by it. The two are distinct. In principle, an individual could possess an interest that she is able to affect in her professional role, or some other kind of bias, and yet be a person of sufficient integrity to shutter it out, denying it the capacity to place her judgment in conflict. She might, in other words, resist the temptation to further that interest; she might rise above that bias and hence remain unconflicted. In *Conflict of Interest in American Public Life*, I argued that “interest” and “conflict,” as applied to public officials, have each changed in meaning over time. To grasp these changes, it is helpful to draw on the objective/subjective distinction. Something is objective if it has to do with external facts and situations out in the world, and subjective if it has to do instead with internal events inside a person’s head.

### ***Conflict: Objectively Determinable and Objectively Wrong***

Fifty years ago, American public discourse tended to take a “subjective” view of conflict. Those who were enforcing the conflict-of-interest rules in any given case would review whatever they knew about the mentality or character of the official in question and would then hazard a guess as to whether that official, given his particular personality and biography, was more likely to have resisted, or else succumbed to, whatever temptation he might have faced to further his own interests.

Over time, this subjective approach to conflict—subjective because it required attempting to guess about other people’s inner mental states—began to make politicians, civil servants, and commentators uncomfortable. In the 1960s, the legal scholar Roswell Perkins criticized this subjective method for determining the state of an official’s conflict because, he said, it takes on “the flavor of an [unfair] character rating of the official concerned . . . a rating on the scale of imperviousness to motives of personal gain” (1963, 1136). There seems something offensive—indeed, undemocratic and inequalitarian—in al-

lowing a senior senator to advance his interests by millions of dollars, on the grounds that he is so wealthy and/or honorable that he would not notice the conflict of interest, while punishing a minor official on the grounds that he is unlikely to be able to protect his judgment from being conflicted by a far more paltry interest: think of a food inspector who accepts a bottle of wine from a meat packer. After all, the food inspector might be a person of sufficient integrity that he is capable, in making his judgments, of shutting out any feelings prompted by the gift—and the senator incapable of ignoring the thumb-on-the-scale his interest poses—but who can say for sure? To do so, we would have to claim direct access to their mental states.

Compounding this issue, the strand of liberalism animating American law holds that we cannot punish individuals for their inner states of mind in and of themselves, but only for external, verifiable actions—such as holding interests and accepting gifts. As a result, nowadays and for the past several decades, instead of trying to gauge whether any given official really is in subjective inner conflict, American political and legal discourse has taken an objective external approach to conflict.

So, for example, we prohibit all officials from entering into certain objective, factually ascertainable sets of circumstances simply because those circumstances *might lead* to subjective inner conflict in at least some officials, even if not all. We now say that an official is in a conflict if she merely holds stock in a company whose interests she can affect in her official role, or gets gifts from a company whose interests she can affect in her official role. These, after all, are objective facts in that they are features about the external world, not the official's mental state. Any attendant subjective conflict is deemed to be invisible not only to the individual herself—who typically denies its existence—but to any kind of outside determination by legal authorities or political analysts. Today, as a consequence, not only would the wealthy senator be deemed to be in conflict if he sponsored legislation that directly advanced his oil business, but he would be viewed as being in conflict if he took a token gift from a lobbyist just as the food inspection official takes a small gift from the meatpacking plant.

The political understanding of “conflict,” then, has become “objective” in two senses. First, conflicts are now objectively *determinable*: they no longer require us to examine imponderables such as states of mind but merely to find officials in conflict if they are in a certain set of objectively ascertainable circumstances, such as holding certain interests or accepting gifts from certain parties. Second, such conflicts are objectively *wrong* in the sense that they are strict-liability offenses. Once the official is deemed to be in a conflict, his subjective intent or lack of fault is irrelevant—if it were relevant, then we would simply have reimported state-of-mind considerations by the back door.



*Interest: Subjectively Determinable and Subjectively Wrong*

“Conflict,” then, refers to the impaired state of an official’s judgment; and over time in American public life, we have come to use objective, not subjective, factors to determine its presence. “Interest,” for its part, refers to whatever it is that is impairing the official’s judgment that is causing the conflict. Over time, the meaning of interest has headed in just the opposite direction: from the objective and external to embrace as well the subjective and internal.

Fifty years ago, the kinds of interests that were thought to pose encumbrances on an official’s judgment centered exclusively on financial interests or holdings—salaries and fees, stocks and bonds, gifts and payments—that are objectively measurable and externally observable. However, this conception of interest began to broaden to encompass more subjective impairments of judgment. Consider the 1971 U.S. Senate confirmation hearings for Earl Butz, a conservative businessman who was President Richard Nixon’s nominee to be secretary of agriculture. At one point, Senator Hubert Humphrey said to Butz—who had been discussing the possibility of divesting his agricultural stocks—“you can put your [stocks and bonds] in escrow, but I don’t think you can put your philosophy in escrow” (U.S. Senate Committee on Agriculture and Forestry 1971, 57). In other words, Humphrey found Butz’s subjective biases or loyalties or philosophies or attachments—even in the absence of any objective economic interests—to pose a troubling impairment on Butz’s judgment.

Today, this kind of concern is common. A congressman who befriends a lobbyist, a Federal Communications Commission official who publicly discusses her ideological predisposition against commercial TV programming, a vice president of the United States who says his loyalty to his daughter would require him to stand by her should she get an abortion—all have been accused, in recent years, of being in a conflict of interest. The interest involved, however, is an inner subjective one, having to do with the official’s experiences, loyalties, and beliefs, not an external objective one having to do with the official’s financial interests.

Given that as a rule we now operate on the assumption that if an official has an interest, it must affect his judgment, we still have to ask ourselves whether subjective interests like ideologies and allegiances in fact constitute an encumbrance on that judgment, or else in fact actually enable that judgment. After all, as has often been observed, if an official were freed of all of his past experiences, life lessons, perspectives, and worldviews, he would have no mental apparatus left with which to make any judgments in the first place. One way to make this kind of an assessment would be to look at (say) Earl Butz’s decisions as agriculture secretary, and if they were bad decisions—if they



were not in the public interest—then we could conclude that the ideology that Hubert Humphrey worried about had indeed hampered his judgment. Suppose, for example, that Butz had decided to negotiate higher tariffs on imported food. Critics, noting that higher food prices are scarcely in the public interest, might cite that observation as proof that Butz was acting on his encumbering biases in favor of American farming, and hurting food consumers.

Of course, what Butz would say is that his actions were in fact in the public interest—that America needs a strong agricultural economy—and that his subjective ideological beliefs, far from encumbering his capacity to make a judgment as to where the public interest lies, actually constituted the very basis for a sound judgment as to where the public interest lies. What this kind of disagreement shows is that—in a pluralistic, politically liberal democracy—there is no objective standard of the public interest against which official decisions can be measured to determine whether an officeholder's ideology constitutes an encumbrance on—or is instead an enabler of—sound judgment. That is why so much public discourse is consumed with debates about the sincerity and hypocrisy of our public officials, about whether an official's ideologies and loyalties simply represent who she genuinely is, as a subject—whether they represent her own genuine subjective view of the public interest—or whether they divert the official from a deeper, truer self who would do something different.

All of this means that encumbering “interests,” as they are currently understood in American political discourse, have become subjective in two senses: subjectively *determinable* and subjectively *wrong*. They are subjectively determinable because we are prepared to attribute to officials encumbrances that are wholly inner mental states and events. We are prepared, in other words, to consider whether officials' subjective ideologies or friendships, and not just their objective financial holdings, constitute encumbering interests. Such ideologies and friendships become troubling—wrong—because they divert the official not from some objective notion of the public interest (such a notion does not exist in pluralistic America), but from making her own genuine subjective assessments as to where the public interest lies. They are not objectively wrong, leading the official away from the objective public interest, but subjectively wrong, leading her away from where she would otherwise, unencumbered, subjectively judge the public interest to lie.

To sum up so far: Over the course of a few decades, Americans, in their public life, have moved from a subjective to an objective understanding of conflict, and from an objective to a broader subjective understanding of interest. Let me just bring these two transformations together in an example, to show how they work together and to underscore exactly what kind of change has taken place in the meaning of conflict of interest in American public life.

The example consists of the two very different U.S. Senate confirmation experiences of Charles Wilson, who was President Dwight D. Eisenhower's nominee for secretary of defense in 1953, and John Tower, who was President George H.W. Bush's nominee for exactly the same position in 1989. Charles Wilson, in 1953, had been the president of General Motors and was still, at the time of his confirmation hearings, a major stockholder in the company. "No one," as the journalist Walter Goodman reported in his book *All Honorable Men*, "argued that Wilson's attitudes toward General Motors would be transformed by [the] mere divestiture of his GM stock"—which the Senate of course required of him—and yet "not even Mr. Wilson's severest critics suggested that had he kept the stock, he would have been tempted to flood his old company with Defense Department contracts" (1963, 118).

In 1953, in other words, senators focused on objective interests, not subjective biases; all they required was the divestiture of Wilson's objective financial holdings. Senators were able to adopt this position because—on the basis of a considered assessment of Wilson's particular subjective mental functioning and habits of integrity—they felt that neither his emotional attachments nor (for that matter) even his shareholdings would place an honorable man like Charles Wilson in subjective inner conflict; he would simply have risen above any temptation.

However, for John Tower, a defense-industry consultant whom President Bush nominated to be secretary of defense in the fall of 1988, things took a very different turn. Even though—at the time of his confirmation hearings—Tower had already severed all his objective financial ties with defense contractors, senators nevertheless feared that he still harbored favorable subjective attitudes toward the defense industry. What was more, senators refused to use their personal knowledge of Tower—even though they knew him well, since he was also a former senator—to come to an individualized determination as to whether his friendly attitudes to the defense industry were, in fact, likely to render his particular judgment subjectively conflicted—or whether he might, like Charles Wilson was thought capable of doing, simply have risen above those attitudes or set them aside once he assumed office. Instead, senators concluded that the mere objective presence of such attitudes sufficed to place Tower in conflict. Tower, consequently, failed to be confirmed.

So on the American political understanding, we have moved from an era when we were prepared to say that a particular official—say a Charles Wilson—was the type to subjectively surmount any inner conflict posed by his objective financial interests, to one where we assume that even the mere presence of subjective forms of interest—attitudes, beliefs—place an official, a John Tower, in objective conflict. Today, when it comes to conflict, the law has abandoned inner, subjective inquiries for external, objective standards; no matter how

unclouded the official's actual subjective mental state might be, if the closest objective indicators available suggest a conflict, then there is a conflict. But in our understanding of interest, we have moved from objective to subjective. No matter how completely the official may have divested his externally cognizable, objective pecuniary interests, we might still be willing to contemplate an almost unbounded set of inner subjective psychological states as encumbrances.

In large measure, legal liberalism—the view that individuals can be sanctioned only for objective acts, not for subjective mental states—underlies the migration of conflict from a subjective view toward an objective understanding. And political liberalism—the fact that there is no objective truth as to where the public interest lies, only subjective views based on beliefs and convictions—underlies the quest to find encumbrances of a subjective nature, such as loyalties, biases, and ideologies.

### **The Newer Psychological Understanding**

I now turn to (what I will argue is) the reverse view of both conflict and interest emerging from recent—"newer"—psychological studies of conflict of interest: a view on which it is interests that are objectively determinable and objectively wrong, and conflict that is subjectively determinable and subjectively wrong.

#### ***Interest: Objectively Determinable and Objectively Wrong***

Consider interest first—and here I need to make a brief terminological point. In politics, the major kinds of encumbrances on judgment, whether objective (stockholdings, dividends, fees) or subjective (ideologies, allegiances, opinions), can serviceably be termed "interests." In psychology, as we shall see, the encumbrances in question consist of psychological traits such as the tendency to stereotype others or favor one's own group, which may seem to lend themselves less fittingly to the word "interest." Nevertheless, in discussing psychological approaches to conflict of interest, I shall continue to use the term "interest"—I do so because scientists working in the new psychological vein themselves say they are writing about "conflict of interest"—but I shall use "interest" interchangeably with "bias" and "encumbrance."

The kinds of encumbrances on judgment that engage the new psychological approach consist, principally, of an array of prejudices against certain classes of people and a range of partisanship toward one's own cause in conflicts—including biases toward overrating one's own moral virtue, for example, or one's own intellectual capacity. As Moore and Loewenstein put it, these kinds of bias exist "outside of conscious awareness" and are "not accessible to in-

trospection" (2004, 190–191). The point here is not that while the individual may remain aware of her biases or prejudices, she remains unaware of the conflict, that is, strenuously insistent that they will not place her in conflict because she is capable of shutting them out of consideration. It is that she is unaware of the interests, the biases and prejudices, themselves. Based on Banaji and Bhaskar's (2000) discussion, this new psychological enterprise can be understood as the *science of unconscious bias*.

Given the invisibility of the kinds of interests that engage psychologists, but faced with the need to determine their existence, academic psychology has had to devise various, and ingenious, objectively discernible proxies—response time, ease of recall, or word association tests—that signal the presence of such biases. As Chugh, Bazerman, and Banaji put it, "methodologically, unconscious [encumbrances on judgment] present a challenge to observe directly, necessitating that researchers measure outcomes of those processes that are not directly accessible" (2005, 77; see also Greenwald and Banaji 1995, 4–27). So, for example, the proxy of "response latency" relies on the "relationship between speed of response [to a question] and strength of unconscious bias . . . Another important metric is ease of recall, which relies on the relationship between the accessibility of a thought and the strength of an unconscious cognitive [bias]" (Chugh, Bazerman, and Banaji 2005, 77).

Not only are such interests made objectively determinable by psychological techniques, but they are objective in a second sense: objectively wrong. Certainly many of them, such as racial or gender biases, are morally wrong in normative terms. They are wrong on the basis of moral norms of justice and fairness that are objective, in that they exist independently of any given individual's subjective opinion (see Banaji and Bhaskar 2000; Chugh, Bazerman, and Banaji 2005, 89). As Park and Banaji say, "The role of social psychologists has been to untiringly reveal through experiments the contradiction between social ideals of fairness, equality and justice on the one hand, and individual expressions of thoughts, feelings and action that reveals a starkly different mental and behavioral reality on the other hand" (2000, 1020).

The point, however, is not just that such biases are objectively morally wrong, but that racial and ethnic prejudices are objectively judgmentally wrong. There is, as an objective matter of fact, no situation of judgment in which they would be aids as opposed to encumbrances. Think, for example, of judging applicants for jobs, where the objective is to hire the best qualified person. For such a task of judgment—as for any other conceivable judgmental enterprise—racial or ethnic biases are encumbrances no matter whose minds we are talking about (Chugh, Bazerman, and Banaji 2005, 87).

Even beyond morally wrong biases such as racial prejudice, psychologists working in this vein deem many other interests they study to be judgmentally wrong, constituting encumbrances on judgment in objective, externally verifiable terms: terms independent of the subjective mental contents of the participants. To take one example, Chugh, Bazerman, and Banaji (2005, 85–86) discuss, as a kind of precursor of the new psychological approach, Hastorf and Cantril's classic 1954 article "They Saw a Game." In that study, Hastorf and Cantril report that participants from Princeton and Dartmouth, viewing a football game between their two institutions, each deemed the other team to show less sportsmanship and fair play. The underlying notion is that such biases are objectively wrong: wrong in the sense that they divert the participants away from a recognizably objective judgment as to who played fairly, of the sort that would issue from independent observers, such as the game's referees. The norm that deems them wrong for good judgment is objective, in other words, because it is derived from a source wholly external to the minds of the experimental subjects: that is, from the perspective of independent judges.

Take another example. In some psychological experiments, participants are assigned to particular sides in versions of real court cases and then asked to state their idea of a fair outcome. Invariably their ideas of fairness would award the case to the side to which they happen to be linked. The new psychological approach can then state, in objective terms, that their allegiances biased them, because there exists a record of a judge's independent ruling in the case. "Subjects were extremely biased," Babcock and colleagues conclude, both "in their assessments of fairness and predictions of the judge's award" (1995, 1338).

Along similar lines, Moore et al. (2004, 16–17) write that "when choosing how to allocate scarce resources, people honestly believe that they deserve more than independent observers think they deserve . . . People justify self-serving decisions by using the arguments that happen to favour them . . . without awareness of this selectivity"; furthermore, they exhibit "ignorance of these self-serving biases." Again, on the psychological approach, the capacity exists to deem this kind of "partisan[ship]" an objective encumbrance on judgment, because "independent observers"—some tribunal apart from the subjects themselves—are presumed to be able to say what a non-self-serving, unbiased outcome would look like.

As reasonable as this approach may be in the psychology lab, of course, such observers do not exist in the political world. That is why—in most political situations, where there is no objective agreement on just outcomes—American public discourse has turned to subjective conceptions of bias. The task is to determine whether a particular mental trait encumbers the individual in ques-

tion, as she exercises her own sincere, subjective judgment as to where the public interest lies (as Humphrey thought was the case with Butz's agribusiness ties)—or, in fact, enables that judgment (as Butz thought was the case with his agribusiness ties).

For psychologists probing conflict of interest, however, the interests in question are deemed both objectively determinable and objectively wrong: wrong in the sense that they objectively constitute encumbrances on judgment. Neither is the case for the kinds of interests that centrally preoccupy the political conception.

### ***Conflict: Subjectively Determinable and Subjectively Wrong***

Conversely, for psychologists, the kind of conflict that such objectively determinable and objectively wrong interests create is, itself, both *subjectively* determinable and *subjectively* wrong. In other words, given their discipline and as distinct from the legal/political approach, psychologists face no constraint in grading subjects differently based on the degree to which they are internally conflicted—that is, the degree to which they each seem to have surmounted or failed to surmount their biases. As Chugh, Bazerman, and Banaji say, not “all are equally susceptible to . . . conflicts of interest” (2005, 90).

Consider again the independent observers—the judges, the referees, the third parties—in the experiments discussed above. As noted, the fact that these independent observers are *independent* means, for psychologists, that they are capable of setting an objective standard—one external to the minds of the experimental participants—for determining what constitutes an encumbrance. The further fact that these independent observers are *observers*—that is, human beings—implies that they themselves possess a capacity for subjective judgment less conflicted than the human beings who constitute the experimental participants. Here, the observers' less subjectively conflicted judgment is used to stamp the participants' subjective judgment as more conflicted, as unable to have successfully avoided being clouded by the encumbrances in question.

Thus it is that in reviewing the psychological literature, Kronzon and Darley speak of several findings in which “judgments of fair outcomes were biased in an egocentric manner” (1999, 50). This is a statement not just about the presence of bias, but about the extent to which individuals were successful in shutting out those biases from their judgmental processes. It is, in other words, a conclusion not about interest but about conflict, and it is a conclusion about individuals' subjective states of mind—that is, that they failed to shut out their biases—that the objective, legal approach to mental conflictedness would not allow one to make. In similar fashion, Thompson and Loewenstein note that in these kinds of experiments, “judgments . . . will be biased in favour of the self” (1992, 179). Contra the



principle asserted by Roswell Perkins in political discourse, the capacity to grade degrees of subjective conflicted judgment is central to psychology.

While the current political approach restricts itself to objectively determinable indicators of conflict and deems their presence to be objectively wrong in a strict-liability sense, the psychological approach takes the reverse stance. It deems conflict to be subjectively determinable—determinable as a proposition about subjective mental states—and in so doing enables psychologists to grade various such subjective states as more wrong, more conflicted, than others.

### *Two Psychological Approaches*

To sum up thus far: On the current political approach, conflict is determinable and wrong only in an objective sense. The finding of a conflict cannot rely on any attempted assessments of the extent of an individual's inner success or failure to compartmentalize his interests from his judgment; hence the mere externally verifiable evidence of encumbering interests suffices to determine conflict. Those interests themselves, however, have broadened to become determinable and wrong in a fundamentally subjective sense. They embrace not just financial holdings but loyalties, allegiances, and ideologies that, if they are indeed deemed encumbrances, divert the individual not from any objective standard of unoccluded judgment, but from his own inner subjective capacities for genuine judgment. On the emerging psychological approach, by contrast, interest is determinable and wrong in an objective sense—there do exist standards of objective, unoccluded judgment as supplied by independent observers—whereas conflict is determinable and wrong in a subjective sense: we can say, in any given case, whether or not an individual was successful in shuttering out those biases from influencing her judgment.

At one level, the two approaches may seem incompatible. At another level it is possible that they are simply talking past each other. Or, more exactly, perhaps the psychological and the political divide the terrain of conflict of interest between themselves, each applying more aptly to certain kinds of situations and less to others.

To begin pursuing this possibility, recall that the current political approach to conflict of interest—in which interests become subjective while conflict becomes objective—evolved from an older one in which interests were exclusively objective in nature and conflict subjective. As it happens, a reverse kind of evolution has occurred in the psychological approach to conflict of interest. Psychology's current subjective approach to conflict—and its objective approach to interest—were preceded by an earlier, more subjective psychological understanding of interest and a more objective psychological approach to conflict.

This earlier psychological approach—I will call it the “older” psychological approach—still thrives. It is older simply in the sense that it emerged a couple of decades before the psychological approach that I have outlined in the previous section and that I am calling the “newer” psychological approach. Understanding the older psychological approach is necessary for fully appreciating the strengths and limitations of the newer version and the extent to which it is or is not relevant for public life.

### **The “Older” Psychological Approach**

In the 1980s, Kahneman and Tversky pioneered the idea that certain psychological traits could be both biases and heuristics—both encumbrances on judgment and functional for judgment. Think of “availability,” the tendency to recall the most mentally accessible information when making a judgment. Or “representativeness,” the tendency to judge an individual case by assigning it to a particular class based on what one knows about its attributes. Or “anchoring and adjustment,” the tendency to use a known benchmark and then adjust from it in judging an unknown quantity.

On the one hand, these habits of mind can be functional for judgment as rules of thumb: in other words, as heuristics. But on the other hand, they fall short of the complete rationality and ability to digest information that constitutes ideal judgment: in other words, they are also biases. As heuristics, Gilovich and Griffin observe, “representativeness, availability, and anchoring and adjustment were proposed as a set of highly efficient mental shortcuts that provide subjectively compelling and quite serviceable solutions to . . . judgment problems. But the solutions were just that—serviceable, not exact or perfectly accurate” (2002, 4). And so, as they also note,

each heuristic was associated with a set of biases: departures from the normative rational theory that served as markers or signatures of the underlying heuristics. Use of the availability heuristic, for example, leads to error whenever memory retrieval is a biased cue to actual frequency because of an individual’s tendency to call attention to examples of a particular (restricted) type. Some of these biases were defined as deviations from some ‘true’ or objective value, but most by violations of basic laws of probability. (3)

So for this older psychological school, there exists a certain set of key psychological characteristics that both encumber and enable judgment. They encumber judgment if the objective is a thorough, rationally impeccable judgmental process, but they enable judgment in less than perfect circumstances, where the goal is to judge quickly on the basis of limited information. As



Haselton and colleagues put it, “many decisions are made in a boundedly rational way . . . and . . . heuristics are psychologically plausible solutions in situations where the best solution does not exist or cannot be reached anyhow”; “heuristics are fast (because the underlying algorithm is simple) and frugal (because they utilize only little information)” (2009, 739–741; see also Funder 1987; Gigerenzer 1996, 592–593; and Gowda 1999).

Some psychologists began offering a related (but not incompatible) evolutionary approach. Instead of claiming that certain psychological processes constitute both encumbrances on judgment and enablers of judgment, these scholars argued that some such processes constitute both encumbrances on judgment and enablers—not of judgment—but of other human purposes. As Jonathan Haidt has argued, for example, if our “purposes are to persuade not judge” (2001, 819)—and if “when faced with a social demand for a verbal justification [for one’s behavior], one becomes a lawyer trying to build a case rather than a judge searching for the truth” (814)—then bias can be functional, for it enables us to mount more effective arguments, even as it inhibits us in judging them. Or if our goal is to get a certain job done, we might do so more effectively if we falsely judge, due to an optimism bias, that our task is easier to accomplish than in truth it is (Buehler, Griffin, and Ross 2002, 262). Or if our purpose is to signal solidarity with an “in group,” biases can be functional, too, even if they encumber us in judging the truth. As Haidt puts it, “from an evolutionary perspective, it would be strange if our moral judgment machinery was designed principally for accuracy with no concern for the disastrous effects of periodically siding with our enemies and against our friends” (2001, 821). Along similar lines, Steven Pinker notes that “people are embraced or condemned according to their beliefs, so one function of the mind may be to hold beliefs that bring the belief-holder the greatest number of allies, protectors, or disciples, rather than beliefs that are most likely to be true” (2005, 18).

It can, then, be functional to “hold attitudes that satisfy certain social goals,” such as persuading others or identifying with our group or spiritedly tackling challenges, even if those attitudes are dysfunctional when it comes to judgment (Chen and Chaiken 1999, 78). Along these lines too, biases that may well be dysfunctional for judging the truth can be functional for other purposes.

Here is a way of restating the broad strokes of this older psychological approach: a way that uses the vocabulary of “objective” and “subjective” to describe its views of “interest,” the kind of encumbrances in play, and “conflict,” the extent to which individuals can rise above or shut out those encumbrances in exercising judgment. In other words, here is a way of translating this older psychological approach into the “subjective” and “objective” vocabulary of the political approach.

From one perspective, psychological traits such as availability and representativeness, or in-group preferences and optimism, impair judgments just as any encumbering interest does. They do so, that is, on the assumption that we are engaged in a certain kind of normative activity, an activity governed by the “objective” norm, as Gilovich and Griffin (2002) call it, of total truth and accuracy in judgment. If the “normative standard” is total “accuracy or truth” (Haselton et al. 2009, 735), in other words, then these traits indeed encumber judgment. If, however, we substitute another equally objective norm—say quick and proximate truth and accuracy—then traits such as representativeness and availability can enable judgment. And if the objective norm is not judging truth at all but achieving personal survival and social success, then traits such as in-group preferences and optimism enable those goals. As Haselton and colleagues note, “a reconsideration of the standards used to judge performance can radically change conclusions about human rationality . . . many bias and error phenomena are artifacts of . . . questionable, i.e., inapplicable, normative standards” (725).

In effect, then, a number of competing norms could govern any particular situation in which traits such as representativeness, availability, in-group preference, and optimism are in play. Each of those competing norms—complete truth and accuracy, quick and proximate judgment, social success—qualify as “objective,” to use Gilovich and Griffin’s language, in that they are conceivable in a way external to any personal or subjective convictions or preferences. They are set by standards that operate independently of any given person’s mental state and are accessible without the need to delve into any given individual’s mind. Yet because these standards conflict with one another, the question as to which should apply to any given situation is ultimately a subjective one, dependent on the purposes or interests of the individual applying them. What determines whether any given one of these psychological traits encumbers perfect judgment, enables quick and imperfect judgment, or enables some other goal, depends on which of these norms is, for any given individual, “subjectively compelling” (again, I use Gilovich and Griffin’s terms) in the particular case at hand. No objective meta-norm exists for choosing among these various objective norms; instead, any such choice depends upon the subjective purposes of the individual at a given time.

Note that the sense in which encumbrances are subjective on the older psychological approach differs from the way in which they are subjective on the new political approach. On this older psychological model, there are *several* objective norms—completely rational judgment, fast and frugal judgment, social success of various sorts—and, depending on the individual’s subjective choice between them at any given time, traits like representativeness or in-group allegiance may or may not be encumbering. On the new political model,

there are *no* objective norms—norms that tell us objectively where the public interest lies—and so, depending on the particular makeup of the individual's own genuine, subjective capacity for judgment on the merits, mental traits such as loyalties and ideologies may either encumber or enable it.

But the old psychological approach's take on encumbering interests differs much more profoundly from the new psychological approaches. The older psychological approach adopts an ultimately subjective orientation to choosing the norms (unencumbered judgment, fast and frugal judgment, social success) that determine whether a particular trait such as representativeness or in-group allegiance constitutes an encumbrance. The newer psychological approach, by contrast, focuses only on the norm of unencumbered judgment and on biases such as prejudice or partisanship that are wrong on independent, objective standards—the standards of independent observers—and are hence encumbrances in an objective sense.

Turn now from the older psychological approach's conception of whether a particular psychological trait will be encumbering or not, to its take on whether any such encumbrances necessarily pose a "conflict" in any given case. In other words, turn to the question of how to determine whether individuals are capable of shutting out such encumbrances from their judgmental processes. Here, I will argue that the older psychological model takes an objective approach to conflict.

In pursuing the question of the older psychological approach's take on conflict, we must assume that the individual's goal happens precisely to be completely accurate, rational judgment, not "fast" and "frugal" judgment or social success. Otherwise, traits such as representativeness and availability, or in-group allegiance and optimism, would not constitute encumbrances on judgment, and there would then be no question of conflict to be resolved—no question of whether the individual rises above those encumbrances in his judging process.

So take mental traits such as representativeness, availability, in-group preferences, and optimism to be encumbrances. The question is this: In those circumstances in which an individual's purposes are to judge with complete accuracy—where on the governing norms as he subjectively chooses them, such traits *are* to be considered as encumbering interests—how do we deal with the question of whether the individual is able to rise above them, such that his judgment is in fact not conflicted?

Note that—unlike an interest in an oil refinery (the political approach, whether old or new) or a particular prejudice against blacks or women (the new psychological approach)—traits such as representativeness, availability, in-group preferences, and optimism necessarily characterize everyone. They are, at least as they are portrayed in the psychological literature, part of the

“architecture of the human mind” (Haselton et al. 2009, 755). We are all (to the extent that for our subjectively chosen purposes they are encumbrances and not heuristics or modes of achieving social success) unable to rise above them. Nobody transcends them; hence nobody’s mind meets the standard of a perfectly rational, clear-thinking, fully informed mind. And if no subjective mind meets such a standard, then it must be an objective one.

For all of us, then, our judgment is conflicted. No real individual can achieve the kind of consistent accuracy or truth as can that ideal mind. As T.K. Das and Bing-Sheng Teng put it, when the “rational mode is the benchmark against which all the others are considered . . . decision-making is a comprehensive, normative process” and “cognitive limitations preclude the possibility of a truly comprehensive process” (1999, 764).

The older psychological approach, then, takes an objective view of conflict. For unlike the newer psychological approach, which leaves open the possibility of psychologists ranking the degree of subjective conflict in different individuals—deeming A subjectively more conflicted than B—the older psychological approach is not geared toward grading the degree of subjective conflict. On the older psychological approach, human beings are all equally conflicted—equally vulnerable to, or incapable of rising above, traits such as representativeness or in-group allegiance because they are part of the architecture of all minds.

Put another way, we are all in conflict when compared with the only available norm, the objective norm of the completely rational, fully informed mind operating according to “normative standards of logic” (Haselton et al. 2009, 738). It is an objective norm because it is wholly independent of the minds concerned and for precisely that reason no one meets it. As Haselton and colleagues note, that norm—that “traditional model of rational choice”—embodies “unlimited reasoning power, boundless knowledge, and unlimited time to make . . . decisions,” but the “real world human capacity for judgment” does “not look like this.”<sup>1</sup> Likewise, when Gilovich and Griffin write that “another common accusation against the heuristics and biases tradition is that researchers hold experimental participants to an inappropriately high or even misguided standard of rationality,” they are in effect noting that the older psychological approach uses an objective standard—one wholly independent of the minds concerned—for assessing their incapacity to rise above the encumbrances in judging posed by every human mind’s architecture (2002, 12).

So the older psychological approach, as does the newer political approach, takes an objective view of conflict. Of course, there is a difference. On the older psychological approach, no one can meet the objective standard of nonconflictedness. On the newer political approach, by contrast, there are

many ways of meeting the objective standard of conflictedness. One simply has to be holding any of the required interests, loyalties, or ideologies, and—regardless of his subjective mental state—he will not be deemed to have risen above them in the act of judging.

Let me now sum up the older psychological approach to “interest” and “conflict,” using the language of “subjective” and “objective.” First, on the older psychological approach, the matter of whether a particular psychological propensity (representativeness, in-group bias, etc.) should be treated as an encumbering interest is a subjective one. It involves the subjective choice, by reference to the subjective goals of the individual in question, as to whether her purposes happen to be unoccluded rational judgment, fast and frugal judgment, or social success. Second, assuming that we are talking of an individual for whom the psychological propensities concerned—representativeness, in-group bias, and so on—do indeed act as encumbrances, given her goal of unoccluded rational judgment, the matter of whether they place her in conflict is an objectively determined one. It is determined by a standard outside of or external to any existing human minds, since none in fact rise above or escapes being conflicted by such encumbrances.

On the newer psychological approach, by contrast, the encumbrances in question are objectively so deemed. There is an objectively applicable norm that deems racial prejudice and other kinds of stereotyping or partisanship to be encumbering of judgment under any circumstances. But the question of whether—or to what extent—any given mind is capable of surmounting such an encumbrance is a subjective matter, to be determined by testing and probing into the mind in question, and comparing it to others. To see a summary of all four approaches, the older and newer political and the older and newer psychological, see Figure 9.1.

### **Limitations of the Newer Psychological Approach**

By no means is it the case that what I am calling the “older” psychological approach has disappeared and yielded to the newer psychological one. The two approaches exist today side by side in that, at any given time, various researchers are working in both veins. The boundaries between the old and new psychological models, in other words, are conceptual, not historical or even personal. Individual psychologists do not assort themselves into partisans of one approach to the exclusion of the other; many have worked in both streams. But because the older psychological model and the newer political model each adopt a subjective approach to normatively defining encumbrances, and an objective approach to normatively defining conflict—albeit in different ways—they cabin the range over which the newer psy-

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Figure 9.1 Comparing Approaches to Conflict of Interest

**Older Political Approach**

- *Interests*—honorariums, stocks, salaries, etc.—are objective, in that they are determinable on the basis of external facts without our having to examine the contents of minds
- *Conflict* is subjective, in that it is determinable by examining the contents of minds to ascertain the extent to which individuals successfully shut out their interests in making judgments, and the extent to which they remain conflicted

**Newer Political Approach**

- *Interests*—loyalties, biases, ideologies, etc.—are subjective, in that they are subjectively determinable by examining the contents of minds to ascertain which mental traits encumber and which enable a given individual's faculty of judgment. And they are subjectively wrong, as adjudged by their ability to divert individuals from their own subjective capacity for judging the public interest
- *Conflict* is objective, in that it is objectively determinable on the basis of external facts without our having to examine the contents of minds, and objectively wrong as adjudged on a strict-liability view of mental states

**Newer Psychological Approach**

- *Interests*—unconscious prejudices and partisanship—are objective, in that they are objectively determinable via external behavior such as response times without our having to examine the contents of individual minds. And they are objectively wrong as adjudged by independent observers
- *Conflict* is subjective, in that it is subjectively determinable by examining the contents of minds to determine the extent to which individuals successfully shut out their interests in making judgments, and the extent to which they remain conflicted by them. And it is subjectively wrong as adjudged by the possibility for grading one individual's mental states against another's

**Older Psychological Approach**

- *Interests*—representativeness, availability, in-group bias, optimism—are subjective, in that they are determinable by examining the contents of minds to ascertain which mental traits, given the individual's purposes, encumber an individual's faculty of judgment and which enable that faculty or other capacities he possesses
  - *Conflict* is objective, in that it is determinable on the basis of external standards of rationality, without our having to examine the contents of minds
- 

chological approach, with its objective approach to encumbrances and its subjective approach to conflict, applies. Consider two ways in which this is the case, the first having to do with interest (or encumbrance) and the second with conflict.

First, according to the older psychological approach, some mental habits that encumber judgment might—as we have seen—be functional if the governing norm is something other than completely rational judgment. According to the newer political approach, in a bookend way, when the aim is judgment, some mental ties and allegiances that could encumber that judgment might in fact not do so if there is no governing norm of functionality. This describes the world of



politics. Or at least it describes the world of liberal politics, in which pluralism and disagreement as to the good will always be with us. There is no objective truth as to whether the public interest lies in supporting or opposing agricultural subsidies—and hence no objective way of stating that ties to agribusiness either are or not encumbrances for judging that truth. All we can do is inquire into whether, for the particular individual in question, a partiality toward the interests of U.S. agriculture is a component of his subjective capacity to judge the public interest on the merits, or an encumbrance on it. The newer political approach thus joins the older psychological approach in taking a subjective view of interest, one that leaves the determination of encumbrances up to factors concerning the subjective psychology of the individual in question.

By contrast, the newer psychological approach, for which there definitely is a governing norm of functionality—of right answers to judgmental questions as determined by independent observers—can and does claim to identify encumbrances in objective terms. That may indeed work well for the kinds of tasks on which psychologists focus. But it meets its outer limits at the boundaries of the liberal-democratic public sphere.

Turn now (and this is the second way in which the new psychological approach gets cabined by the political sphere) from “interest” to “conflict.” Turn, in other words, from the question of whether a given psychological trait is an encumbrance on judgment, to the matter of whether any given individual can more or less successfully rise above it, shutting it out from her judgmental process.

According to the older psychological approach, everyone is in conflict because we don’t meet the maximal objective threshold of perfect unencumberedness. According to the newer political approach, in a bookend kind of way, anyone is in conflict who *does* meet the minimal objective threshold of having encumbrances: of possessing whatever interests or loyalties or attachments are deemed encumbering. No need for any further subjective inquiry as to whether a particular individual actually rises above—resists being placed in conflict by—those interests or not; no need to distinguish a wealthy senator from a food inspector of modest means. The new political approach thus joins the older psychological approach in taking a democratic, egalitarian view of conflict, one that does not claim to rate the subjective mental states of different people. There is something liberal, too, about that reticence. After all, mental freedom—the ability to protect one’s mental contents from the scrutiny and evaluation of others and be judged only by one’s conduct—is a linchpin of liberalism. Again, the newer psychological approach finds itself cabined. Its openness to grading subjective degrees of conflict, which may well be scientifically possible and normatively acceptable in the lab or other experimental situations, does not work once one enters the liberal-democratic public square.



## Conclusion

None of the foregoing is meant to say that the newer psychological approach is in any way inapt on its own terms, that is, psychologically. Psychologists of the newer approach are surely right in telling us that—as an objective proposition—racial and ethnic prejudices encumber judgment. And psychologists of the newer approach may well have devised sound methods for assessing the degree to which a person is in subjective conflict and did in fact fail to resist being compromised in her judgment by those encumbering linkages and partisanship. Psychologists claim, with good reason, to assess states of mind; that is the nub of the field.

But politically—in the public realm where politicians and citizens act—the newer psychological approach is inapt. Its objective take on encumbrances is belied by the pluralism that is central to liberal political values and that makes it possible to stamp our ties or allegiances as encumbrances only in a subjective sense, in that they may or may not divert us from *our* own normative approaches and beliefs. And the newer psychological approach's subjective take on grading conflict is belied by the egalitarianism that is central to democratic political values and that, in the public sphere, requires us all to meet the same objective norms. The newer psychological approach to conflict of interest may have much to say about encumbered judgment as psychologists know and understand it. There is little role for it to play, however, in discourse over conflict of interest in the public life of a liberal democracy.

## Note

1. Haselton et al. (2009) are critical of this component of the older psychological approach, but that is because, for them, a given individual's subjective purposes are more likely to require only fast and frugal sorts of judgment.

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## Guerrilla Government

*Rosemary O'Leary*

**Guerrilla:** [One] who engages in irregular warfare especially as a member of an independent unit. (Merriam-Webster 2012)

“Fire the bastard!” I can still hear my boss yelling at me, instructing me to get rid of my most creative and passionate employee. I was twenty-eight years old and the director of policy and planning for a state environmental agency. My employee, earnestly dedicated to environmental concerns, had turned into a “guerrilla,” working clandestinely with environmental groups and the media, leaking data, and showing up at nighttime public hearings blasting the governor and my boss for “caveman-era water policies.” He was seeking to accomplish outside the organization what he could not accomplish within the organization.

In this chapter I present the idea of “guerrilla government,” briefly highlight relevant literature, present an in-depth case study of guerrilla government, and then offer questions to ponder about the ethics of guerrilla government.

“Guerrilla government” (O’Leary 2006) is my term for the actions of career public servants who work against the wishes—either implicitly or explicitly communicated—of their superiors. Guerrilla government is a form of dissent usually carried out by those who are dissatisfied with the actions of public organizations, programs, or people but who typically, for strategic reasons, choose not to go public with their concerns in whole or in part. A few guerrillas end up outing themselves as whistle-blowers, but most do not.

Rather than acting openly, guerrillas often choose to remain “in the closet,” moving clandestinely behind the scenes, salmon swimming upstream against the current of power. Over the years I have learned that the motivations driving

guerrillas are diverse. Their reasons for acting range from the altruistic (doing the right thing) to the seemingly petty (I was passed over for that promotion). Taken as a whole, their acts are as awe-inspiring as saving human lives out of a love of humanity and as trifling as slowing the issuance of a report out of spite or anger. Guerrillas run the spectrum from antiestablishment liberals to fundamentalist conservatives, from constructive contributors to deviant destroyers. Guerrilla government is about the power of career bureaucrats; the tensions between career bureaucrats and political appointees; organization culture and what it means to act responsibly, ethically, and with integrity as a public servant.

Most guerrillas work on the assumption that their work outside their agencies provides them latitude that is not available in formal settings. Some want to see interest groups join, if not replace, formal government as the foci of power. Some are tired of hardball power politics and seek to replace it with collaboration and inclusivity. Others are implementing their own version of hardball politics. Most have a wider conceptualization of their work than that articulated by their agency's formal and informal statements of mission, but some are more freewheeling, doing what feels right to them. Some are committed to a particular methodology, technique, or idea. For some, guerrilla activity is a form of expressive behavior that allows them leverage on issues about which they feel deeply. For others, guerrilla activity is a way of carrying out extreme viewpoints about pressing public policy problems.

Guerrillas bring the credibility of the formal, bureaucratic, political system with them, as well as the credibility of their individual professions. They tend to be independent, multipolar, and sometimes radical. They often have strong views that their agency's perspective on public policy problems is at best not sufficient, at worst illegal. They are not afraid to reach into new territory and often seek to drag the rest of the system with them to explore new possibilities.

At the same time, guerrillas run the risk of being unregulated themselves. Sometimes they fail to see the big picture, promoting policies that may not be compatible with the system as a whole. Sometimes they are so caught up in fulfilling their own expressive and instrumental purposes that they may not fulfill the purposes of their organization. This is the dilemma of guerrilla government.

Every seasoned public official with whom I have discussed guerrilla government agrees that it happens and has offered stories and examples of this phenomenon. For example, I received the following e-mail message in response to my call for stories of guerrilla government: "I worked for 35 years as a federal employee and now teach at American University. The instances of guerrilla government are far more widespread than you imagine."

### Three Lenses

The great thinkers in the social sciences have for years grappled with guerrilla government under very different labels and in very diverse ways. Three major lenses or vantage points from which to view guerrilla government emerge from the social science literature; each offers a different type of understanding. The three lenses are bureaucratic politics, organizations and management, and ethics. They are briefly introduced here.

#### *Bureaucratic Politics*

The bureaucratic politics literature is vast and spans several decades. The key points about bureaucratic politics are that career public servants make policy through the exercise of discretion (Appleby 1949) and that public administration is a political process (Appleby 1949; Cleveland 1956; Key 1958; Stein 1952). Moreover, bureaucrats and bureaucracy are driven by their own highly particularized and parochial views, interests, and values (Long 1949), and bureaucrats' views tend to be influenced by the unique culture of their agencies (Halperin and Kanter 1973). All bureaucracies are endowed with certain resources that career public servants may use to get their way: policy expertise, longevity and continuity, and responsibility for program implementation (Rourke 1984). Agencies and bureaucrats within agencies often seek to coopt outside groups as a means of averting threats (Selznick 1949).

#### *Organizations and Management*

Classic organization theorists—such as Cyert and March (1963), Emery and Trist (1965), Katz and Kahn (1966), Thompson (1967), Lawrence and Lorsch (1969), and Aldrich (1972)—all maintained that organizations are both shaped by and seek to shape the environment in which they exist. This “open systems” approach to understanding organizations maintains that organizations are in constant interaction with their environments, that organization boundaries are permeable, and that organizations both consume resources and export resources to the outside world. In other words, organizations do not exist in a vacuum. Public organizations, such as the U.S. Environmental Protection Agency (EPA) in the case study that follows, seek to thrive in environments that include influences by the concerned public, elected officials, the judiciary, interest groups, and nongovernmental organizations, to name just a few of the entities influencing them. Working with, and being influenced by, individuals and groups outside one's organization has long been a fact of life for public servants (Brownlow 1955; Gaus 1947; Stillman 2003; Wildavsky 1964).

### ***Ethics: The Most Important Lens***

Since other chapters in this book delve very deeply into the literature on ethics, I will overview only the most relevant works here. Ethics is the study of values and how to define right and wrong action (Cooper 1998, 2001; Menzel 1999; Van Wart 1996). Waldo (1988) offered a map of the ethical obligations of public servants, with special reference to the United States. His map, which is still relevant today, is especially applicable to the issue of guerrilla government. In his map, Waldo identified a dozen sources and types of ethical obligations, but cautioned that the list is capable of "indefinite expansion" (103) and that the obligations do not lend themselves to any prioritization.

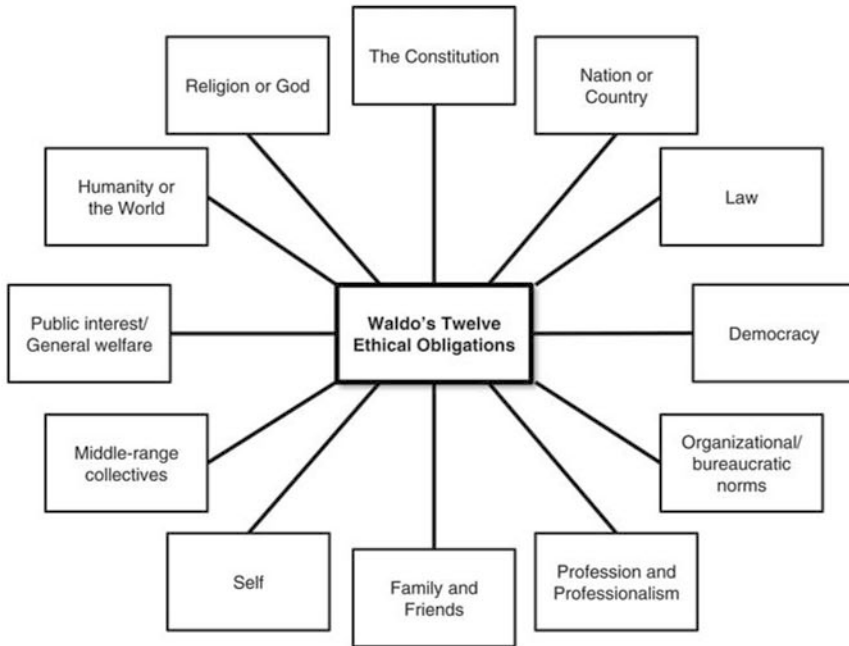
Waldo's twelve ethical obligations are presented in Figure 10.1. The message of Waldo's map of ethical obligations is that different public servants will be compelled by different ethical obligations. This makes iron-clad conclusions about whether guerrillas are right or wrong at times difficult. Compounding this analytical challenge is the "problem of ambiguity" in making ethical determinations (Cooper 1998; Dobel 1999; Fleishman 1981; Rohr 1988).

### **Case Study: Guerrilla Government in the EPA's Seattle Regional Office**

When Ronald Reagan was elected president of the United States in 1980, he sought to make dramatic changes in the federal government. One study summed up his mission and purpose as follows:

He believed simply that government should spend less, do less, and interfere less with private enterprise. For twenty-five years since he began to make his living and his reputation as a conservative lecturer, Ronald Reagan had spent his time among those who argued there was too much government. He believed government was in the hands of people who "think control is better than freedom." He believed the bureaucrats had shackled American industry through regulation. "There are," Reagan said, "tens of thousands of . . . regulations I'd like to see eliminated." . . . In his inaugural address Reagan said "Government is not the solution to our problem; government is the problem." (Lash, Gillman, and Sheridan 1984, xi–xii, 13)

Reagan appointed Anne Gorsuch administrator of the Environmental Protection Agency. In her testimony during her confirmation hearing before the Senate Committee on Environment and Public Works, Gorsuch said, "The President is committed to regulatory reform and . . . I share [that] commit-

Figure 10.1 **Waldo's Twelve Ethical Obligations**

ment. . . . There is no greater opportunity to effectuate that goal than the one ahead at EPA” (U.S. Senate, 96th Cong., 2nd Sess.). Reagan and Gorsuch implemented that commitment by handpicking EPA regional administrators whose beliefs matched theirs. One of these appointees was Gorsuch’s good friend John Spencer. His tenure at EPA and the later EPA appointment of Robie Russell serve as contexts illustrating both the subtle and sophisticated power of guerrilla government and of some of the conditions under which guerrilla government might emerge.

### ***John Spencer and the Reign of Terror, 1981–1983***

On August 3, 1981, John R. Spencer became the administrator of the Environmental Protection Agency’s Seattle Region 10 office, which encompasses Alaska, Idaho, Oregon, and Washington State. Prior to his appointment, Spencer had worked as the executive manager of municipal utilities in Anchorage. He also was a former city attorney and a former vice president of RCA Alaska Communications Inc. Upon his appointment, Spencer assured the public that he would foster a “pragmatic response” to pollution problems and called for



an end to "regulation for regulation's sake" (Pryne 1981, 66). To top EPA career public servants at Region 10 he announced that his approach would be "management by stark terror."<sup>1</sup>

Spencer's tenure at EPA is memorable for a number of actions. First, he announced plans to buy, with taxpayers' money, an official membership for the EPA in the Chamber of Commerce (Pryne 1983c, 14), an organization active in lobbying both the EPA and state environmental agencies. He was repeatedly told by career staff in the Region 10 Management Division that this expenditure was not allowable under federal guidelines, but he continued to pursue the matter. After the move was blasted by U.S. Rep. Toby Moffett (D-CT) as raising serious conflict-of-interest questions affecting the entire agency's decision-making processes, and by environmentalists who said that EPA was "paying to get in bed with big business" (*Seattle Times* 1981), Spencer dropped the idea.

According to career public servants in the Region 10 office at the time, Spencer also took some trips at public expense that were not clearly government activities. It appeared that some of the trips were to conclude personal business from his previous job in Alaska. He also asked that a personal driver be assigned to him on a full-time basis and sought modifications to the EPA office building without getting the approval of the General Services Administration as mandated by federal law. A staff member filed an anonymous complaint with the EPA Inspector General's Office concerning these alleged improprieties. (The Office of Inspector General conducts audits, investigations, and evaluations of agency activities as part of its mission to improve agency performance and prevent fraud and abuse.)

When the director of the Management Division—with a distinguished career in environmental administration (see Exhibit 10.1 for his résumé)—heard about the complaint to the inspector general, he did nothing, contrary to the wishes of Spencer:

He [Spencer] held me responsible for . . . [the complaint to the inspector general]. I didn't know who did it, and I didn't want to know who did it. I viewed that as being a privilege and a duty of government employees when they see wrongdoing to turn it in. So I made no effort to find out who did this. Although he never spoke to me directly about it, I was told indirectly that he was unhappy and felt that if I wanted to I could control . . . [employees who were going to the inspector general]. Somehow . . . [I was supposed to be able to] prevent the staff from parading his embarrassment by turning him in to the inspector general. My response was that I did nothing. Needless to say, there was a fair amount of tension between him and me.

# **Exhibit 10.1    Résumé of a Government Guerrilla**

- 1998–present: Retired; Occasional adjunct professor
- 1992–1998: Special Assistant Chair, Quality Improvement Board  
U.S. Environmental Protection Agency  
Washington, DC; Adjunct professor
- 1990–1992: Deputy Regional Administrator  
U.S. Environmental Protection Agency, Chicago, Illinois  
Recipient: Presidential Rank Award,  
Meritorious Executive 1991
- 1989–1990: Visiting scholar, Indiana University  
School of Public and Environmental Affairs,  
Bloomington, Indiana  
Recipient, Undergraduate Adjunct Faculty of the Year Award
- 1986–1989: Director, Environmental Services Division  
U.S. Environmental Protection Agency, Seattle, Washington
- 1983–1986: Deputy Regional Administrator  
U.S. Environmental Protection Agency, Seattle, Washington
- 1981–1983: Deputy Director, Environmental Services Division  
U.S. Environmental Protection Agency, Seattle, Washington
- 1980–1981: Director, Management Division  
U.S. Environmental Protection Agency, Seattle, Washington
- 1979–1980: Chief, Resources Management Branch  
U.S. Environmental Protection Agency, Seattle, Washington
- 1977–1979: Chief, Air Compliance Branch  
U.S. Environmental Protection Agency, Seattle, Washington
- 1972–1977: Chief, Surveillance Branch  
U.S. Environmental Protection Agency, Seattle, Washington
- 1971–1972: Microbiologist  
U.S. Environmental Protection Agency, Seattle, Washington
- 1969–1971: Microbiologist  
U.S. Department of the Interior, Portland, Oregon
- 1967–1969: Microbiologist  
U.S. Department of the Interior  
Pacific Northwest Water Laboratory, Corvallis, Oregon
- 1966–1967: Microbiologist  
U.S. Department of the Interior Vessel Pollution Study,  
San Diego, California
- 1964–1966: Microbiologist  
U.S. Public Health Service  
Division of Water Supply and Pollution Control, Atlanta, Georgia
- 1961–1964: Biological Sciences Assistant  
U.S. Army Environmental Hygiene Agency,  
Edgewood Arsenal, Maryland
- 1960–1961: Jr. Microbiologist  
State of California Department of Public Health,  
Berkeley, California

When this director, whose appointment to the Senior Executive Service was nearly complete prior to Spencer's arrival, repeatedly told Spencer that procedures needed to be followed and that public funds could not be used for personal trips or for a personal driver, Spencer retaliated by transferring the director to a new position he had created for him in another division and refusing to finalize his Senior Executive appointment:

He called me into his office and told me that he wasn't comfortable in doing business with me and he wanted to reassign me. I asked him why. His answer was that he just was uncomfortable doing business with me. . . . [I was later told that he] wanted to make an example of one of his division directors to show the rest of his staff that he had the ability to fire somebody. I think that would be consistent with his "management by stark terror" idea. Show the staff that you have the ability and the will to remove somebody if they displease you.

From that day through the end of Spencer's tenure, the former director of the Management Division was excluded from most senior management meetings.

### *More Questionable Activities*

Next Spencer lobbied the Army Corps of Engineers on behalf of a yacht club of which he was a member for rapid approval of a dredging permit. Spencer mailed the yacht club's application to the corps, attaching a cover letter written on EPA stationery and signed by him as regional administrator, asking the corps to issue a permit the same week. Spencer wrote a second letter the following month, emphasizing that "quick action is imperative" (Pryne 1983c, 14). The letters became part of the public record, and when environmentalists discovered them, they quickly went to the press. The yacht club eventually withdrew the request and replaced it with another one, which was denied because of concerns expressed by the Washington State Department of Game.

Spencer also was criticized for not vigorously enforcing the law. An example is the case of the Western Processing Company of Kent, Washington, which continually delayed cleaning up hazardous waste. The EPA could have assessed penalties of up to \$5,000 per day for failure to implement an EPA cleanup order, but it didn't. "For the time being," Spencer was quoted as saying, "with the promise of cooperation from Western Processing, EPA will forgo litigation" (*BNA Environment Reporter* 1982), this despite the fact that federal officials said the chemicals at the site had the potential to threaten the city of Kent's water supply (Suffia 1983, 55).

Similarly, Spencer, whose nomination to the EPA post was shepherded by Sen. Ted Stevens (R-AK), tentatively approved wastewater treatment exemptions for two large Alaska pulp mills during his tenure. According to EPA staff who analyzed the application, the exemptions clearly were not warranted under the law. The approval was eventually overturned by Spencer's successor, Ernesta Barnes.

In the same pulp mill case, Spencer ordered EPA staff to release confidential information provided by ITT-Rayonier, the operator of pulp mills at Port Angeles and Hoquiam, to two of ITT-Rayonier's competitors. One former EPA employee described the situation:

The engineer [who drafted the report containing confidential business information] took the report, as demanded [by Spencer], to the regional administrator . . . and the regional administrator wasn't in his office. He was gone for the day, and the engineer asked what to do with the report. He was instructed to give it to a person who was waiting in the regional administrator's office. When he went into the office he recognized the person as being associated with [the competitor's] mill. . . . So the engineer . . . refused to give him the report.

The engineer went back to his office to discuss the matter with his colleagues. They decided to stamp "Confidential Business Information" throughout the report, "so there would be no doubt about what parts of it legally were not disclosable," and hand delivered it to the regional administrator's home. The staff members suspected that Spencer gave the report to the competing mill anyway, but they waited to act on their suspicions.

### *Spencer's Resignation*

Spencer's name also showed up in a report on alleged political use of Superfund monies by Susan Baldyga, a special assistant to fired EPA assistant administrator Rita Lavelle, who had forged sweetheart deals with industry and had lied to Congress. ("Superfund" is the common name for the Comprehensive Environmental Response Compensation Liability Act, which mandates the cleanup of hazardous waste sites.) Rep. Norm Dicks (D-WA) publicly charged Spencer with participating in a plan, allegedly fostered by the Reagan administration, to use \$1.6 billion of Superfund money "to help reelect Republicans" (Pryne 1983a, 130). Spencer strongly denied the allegations but resigned as regional administrator less than two weeks later, soon after Anne Gorsuch and eighteen other high-level EPA officials were fired or resigned.<sup>2</sup> Many of the Seattle EPA Regional Office staff vowed never again to tolerate

a regional administrator like Spencer or to cooperate with a "reign of terror." The stage had been set for more extreme guerrilla government activity.

Gorsuch resigned under a cloud of controversy. She had slashed the EPA budget, destroyed morale at the agency, and alienated Congress by refusing to give an investigative committee documents concerning the agency's controversial Superfund program. Furthermore, Gorsuch had a "hit list" of career EPA staff and advisory board members to be fired because of their political leanings. The Senior Executives Association (SEA) asked the Office of Special Counsel of the Merit Systems Protection Board to begin an investigation of her actions. The list, which was released by a congressional committee investigating the activities at the EPA, included comments about the individuals listed such as "bleeding heart liberal" and "invidious environmental extremist" (*BNA Environment Reporter* 1983a). "This kind of abuse of the merit system represents a gross violation of the Civil Service Reform Act," said SEA president Jean Courturier in a press release. "If uncorrected, [it] would have a chilling effect on the career Senior Executive Service. . . . This type of political shenanigans threatens the very basis of the career merit system" (*BNA Environment Reporter* 1983a).

Spencer, the first of the Reagan regional administrators to resign, went to work for Riedel International Inc., a firm involved in maritime construction, transportation, and environmental cleanup, as senior vice president. He quit his EPA job after only eighteen months. Before he left the EPA, Riedel International was awarded an EPA contract to clean up the hazardous Western Processing plant. The contract was not awarded in a competitive bidding process, said Jim Willman, chief of the EPA's Region 10 emergency response team, because cleanup at the Western site constituted an "emergency" (*Seattle Times* 1983).

The week Spencer announced his resignation, EPA career staff people went to the inspector general again. One described the situation:

He [Spencer] came around to announce that he was going to leave. He had secured a job in private industry. So it really was that I had a dilemma in my mind at that point: should I do anything about my suspicions that he had given confidential business information to this company or not. And after thinking about it for a period of time, I decided that I should call the inspector general and share my concerns with them. My reasons, to be candid with you, were that I really believed that this individual was not the kind of person to be in public service. I wanted to raise a cloud over his candidacy. Even though he was leaving, it was unlikely that anybody would do anything, but I wanted there to be something on the record that might indicate there was a question about his performance in the event that he was ever considered for public office again.

*Investigation by the Office of the Inspector General*

John Spencer's actions were investigated by the EPA's Office of the Inspector General, in consultation with the Office of the U.S. Attorney General. In a report issued August 8, 1983, the investigators concluded that while Spencer engaged in improprieties, there was "insufficient evidence to warrant criminal action" (EPA 1983). The UPI reported, "Paul E. Olson, EPA's assistant inspector general, said prosecution wasn't warranted because no harm was done—[there was insufficient evidence to conclude that] the confidential information was . . . released and the marina never got the dredging permit" (Pryne 1983b). EPA career staff were stunned and disappointed at the mild report by the inspector general.

The EPA staff members had been taken aback by Spencer. Never before had they had a regional administrator with whom they clashed so much. Said one EPA employee:

The whole organization, I think, was surprised by the degree to which they had been traumatized by this guy. Morale was pretty bad, fear was among people, and the trust level was practically zero. I think that under his [Spencer's] administration not many of the staff trusted him . . . and those who cooperated with him, I think their credibility . . . had been severely damaged.

As a new regional administrator was about to be appointed, EPA Region 10 staff geared up for a fight. They had learned from their negative dealings with Spencer and felt they had been too easy on him. Those who confronted Spencer directly had been reassigned or demoted. Those who had appealed to the next person in the chain of command were placed on Gorsuch's black-list. Some no longer trusted the Inspector General's Office. Staff members initially were hesitant to leak information to the press, viewing such action as unprofessional. It was better to resolve things internally, they thought. As a result of the Spencer experience, however, EPA Region 10 staff became more open to such guerrilla activities.

They braced themselves for further battles and informally discussed how to survive the next regional administrator through more intensive guerrilla warfare. One guerrilla phrased his ambivalence in this way:

[The situation] created a dilemma, I think, on the part of the public servant. You are there to serve the RA [regional administrator]—you are there to serve the political appointee—and so forming these [guerrilla government] coalitions or whatever you want to call it—to resist what you perceive to be improper decisions or improper behavior—you are really treading on a very fine line there.

Many EPA staff concluded that one course of action available to them was simply not to protect political appointees. "Let them go forward and suffer the consequences," said one EPA staff member. "Let them make some dumb decision and maybe that will shorten their careers." To their surprise, no such tactics were needed—at least for the next three years.

***Ernesta Barnes, 1983–1986: Guerrilla Activity Wanes***

On June 8, 1983, Seattle banker Ernesta Barnes was appointed the next administrator of the Seattle Regional Office by newly appointed, returning EPA administrator William Ruckelshaus. She said that the appointment was a "great honor" and emphasized that her skill was working with people (Lane 1983, 13). Environmentalists were "wary." Before she worked at the Seattle Trust and Savings Bank, Barnes was director of public service for the Municipality of Metropolitan Seattle (METRO), which operated the county transit system and managed water quality for Seattle. Before that, Barnes was director of the budget for the University of Washington and a founder of the Sound Savings and Loan Association, a business organized and owned by women.

Ruckelshaus announced that he and his regional administrators would foster an "open process" with the public and would act "in the public interest" (Pryne 1983d). Barnes herself announced that she would act as vigorously as the existing laws allowed. By most accounts Barnes did just that, establishing herself as a model regional administrator. One of her first highly symbolic and savvy actions was to promote the former director of the Management Division, who had been fired by Spencer, to deputy regional administrator. This action immediately won her approval by career EPA employees. The new deputy regional administrator, a career EPA employee, described his view of his promotion:

And lo and behold she selected me for the job. I'm not certain why, but I think one of the reasons may have been that she felt that I had integrity in the way I handled the situation with the former regional administrator and I had credibility with the staff. So I wound up one station higher in the organization than I had ever aspired to before.

Barnes served as regional administrator for three years. Among the actions that stand out in her record of service are her successes in increasing the number of EPA staff in areas of critical concern in the Northwest and in greatly improving morale in the agency. She never hesitated to defend EPA staff when she thought they were right, maintaining, often under fire, that they acted firmly and responsibly in correcting problems. She reversed John



Spencer's previous approval of wastewater treatment exemptions for the two Alaska pulp mills (Pryne 1984b).<sup>2</sup> She campaigned vigorously to make the American people realize the economic impact of pollution,<sup>3</sup> penalized local governments that failed to follow environmental laws, and did not hesitate to criticize inadequate state pollution abatement programs (*BNA Environment Reporter* 1983b).

Barnes fostered a get-tough policy on cleaning up Puget Sound, cracking down on nonpoint sources of pollution (*BNA Environment Reporter* 1985a), forcing sewage treatment plants to upgrade, denying requests for waivers of pollution laws (Pryne 1984a), and declaring, "How can anyone not want to clean up Puget Sound?" (Turner 1984) and "I don't feel awkward about defending the Clean Water Act" (Stanfield 1985). She forged alliances with the U.S. Attorney's Office to strengthen EPA enforcement efforts (Green 1985) and with states to regulate federal government polluters<sup>4</sup> and boasted that her office had "embraced the law" (*BNA Environment Reporter* 1985b). She forced a settlement of the Western Processing plant problem that her predecessor had failed to address. She reprimanded the Defense Department for its mishandling of a shipment of transformers containing polychlorinated biphenyls (PCBs) and barred contractors who failed to comply with wage agreements from participating in projects funded by the EPA. Barnes, together with Ruckelshaus, launched an enormous public participation program to help determine whether the ASARCO plant in Tacoma should be shut down because of arsenic emissions (Kalikow 1984). Barnes was given credit for pushing the agency past its reliance on a conciliatory attitude toward business—"taking a polluter to lunch," as environmentalists called it.

Barnes stepped down as Region 10 administrator in March 1986 and became president and chief executive officer of Pacific Celebration '89, a not-for-profit corporation created by Washington State to promote trade, tourism, and cultural exchange during the state's centennial year of 1989. When she left the EPA, newspapers called her "highly respected." One leader of the environmental group Friends of the Earth reported, "She's been fair and we've had access to her" (Pryne 1984b). Barnes's deputy administrator was named acting regional administrator. Guerrilla activity was largely nonexistent in the EPA's Seattle Regional Office.

### ***Robie Russell, 1986–1990: Guerrilla Government Is Triggered Again***

On June 17, 1986, a senior deputy attorney general from Idaho was named to succeed Ernesta Barnes, and guerrilla government emerged once again in the EPA Region 10 Office. Robie Russell previously had worked as acting chief

of the Natural Resources Division at the attorney general's office, where he had responsibilities for public lands, water resources, environmental protection, parks and recreation, fish and game, and agricultural issues. A former Republican Party county chair, Russell also had worked as an attorney at the law firm of Bielenberg, Anderson and Walker, in Moscow, Idaho.

By all accounts, Robie Russell's tenure at the EPA started out like Ernesta Barnes's tenure. While there was some skepticism among EPA staff, the regulated industries, and the EPA, most supported him. Russell's earliest press releases seemed to echo Barnes's earliest sentiments. He talked about the "fine staff of dedicated people" at Region 10 and his preferred "management [style of] . . . example and consensus. . . . When people are reaching their objectives they should have the opportunity to participate," Russell said. The new administrator also said that he would not hesitate to undertake enforcement actions when necessary and expressed support for the new civil investigator that the regional office had just hired. "In the broadest sense of the word I'm an environmentalist," he quipped (Gilbreath 1986).

Russell's early actions as administrator also were reminiscent of Ernesta Barnes. In a strongly worded letter, he warned a local pollution authority that it could lose federal money if it did not strengthen its approach to controlling toxic discharges into Puget Sound. He filed legal action against nine companies accused of violating Superfund laws. He urged states in the Northwest to forge a pact to deal with common hazardous waste challenges, chastising them for exhibiting the NIMBY (not-in-my-back-yard) syndrome and inviting them to a regional conference to discuss hazardous waste issues with local governments, industry representatives, and environmentalists from Washington, Oregon, Idaho, and Alaska.

### *Robie's Questionable Activities*

By the end of March 1987 (less than a year into his term as regional administrator), however, Russell's honeymoon was over. Local news media announced that a veteran engineer had quit his EPA job in anger, a disgusted branch chief was seeking to be loaned to another agency, and a resentful section supervisor had been involuntarily transferred to a different job. All alleged that Russell had taken too soft a stance on two important cases: proposed oil drilling in the Arctic National Wildlife Refuge and dredging at the navy port in Everett.

Russell began making his most important decisions in closed-door meetings with only his division heads present. Most of the time, he did not even include his deputy administrator—the same career administrator who had served as deputy under Barnes. The deputy responded by holding a series of clandestine, guerrilla-government-style meetings with the division heads

before each of their meetings with Russell. The group would agree on a unified staff recommendation and then present it to Russell in the closed-door meeting. The deputy described the meetings:

I wasn't invited to come to the meetings. . . . So the way we dealt with that was I would meet privately with the Division Directors before their meeting with the RA, and they would brief me on the issue, and I would tell my feelings about the issue and expect them to articulate a staff position. . . . That's how I kept my oar in the water. We would often discuss what we needed to do in order to try to steer the RA back on a path that we felt . . . we were most comfortable with. I felt pretty awkward in this situation, almost like I was being kind of conniving with the division directors in plotting a strategy behind his back.

The staff were also concerned that some who had performed the analyses forwarded to the administrator had been cut out of the decision-making process by Russell, that he deleted negative comments in reports before they were released to the public, and that those who dared to question the administrator were ostracized. A UPI report carried Russell's response to the allegations:

The only difference is I've asked the division directors to get in there and be involved, rather than dealing on every issue direct. There haven't been any big dramatic changes in the agency. I'll never be Ernesta. I should be measured by my own performance. My management style isn't inconsistent with the way the agency is set up. What the hell is the problem? There is no problem. You have people who have gotten used to doing things in a certain way, and now it's being done differently. (*Ellenburg Daily Record* 1987)

Some EPA staff concluded that all-out guerrilla warfare was inevitable.

After publicly blasting a Department of the Interior environmental impact statement for not adequately analyzing the possible negative effects on wildlife and the environment of proposed oil development in the Arctic National Wildlife Refuge (*Inside Energy* 1987), Russell abruptly backed off and gave his support to the project. In June 1987, Russell announced that an EPA analysis had concluded that the Interior Department document was "incomplete in its presentation of scientific data" and did not adequately address most of EPA's concerns about the impact on air quality, demands on freshwater supplies, and effects on marine fish populations (*Inside Energy* 1987). One month later, in July 1987, Russell seemed to reverse himself when he testified before the U.S. House of Representatives panel considering the proposal that EPA did not oppose the environmentally acceptable development of the Arctic National

Wildlife Refuge. His action infuriated environmentalists and the EPA staff who worked on the EPA analysis.

In November 1987, Russell was criticized by the press, which had been tipped off by an EPA staff member, for spending too much time in his home state of Idaho. One news account concluded, "EPA records show that so far this year Robie G. Russell has spent all or part of 43 days on official travel in Idaho, three times the 13 days he has spent on official travel in Oregon, Alaska, and in Washington outside the EPA's regional office in Seattle" (Smith 1988).

Russell shrugged off the criticism, explaining that he was more in tune with Idaho's environmental issues and had been asked to the state more often than the other states in his region. When accused of using government money to fund private trips to Idaho, Russell said he occasionally mixed business with pleasure, but such actions were minor, such as having lunch with friends. The press report concluded that eight of Russell's official trips to Idaho included weekends or vacation time. The same report quoted an environmentalist attorney in Idaho as saying, "I can say this: His travel back to Idaho hasn't produced any great results with the environment" (*Spokesman Review* 1987). EPA staff members went back to the inspector general.

### *Investigation of Russell by the Inspector General*

In July 1988 the EPA Inspector General's Office released a twenty-seven-page report of an investigation into Russell's travel habits. The report found no evidence of criminal or administrative wrongdoing. The inspector general determined that while Russell made sixteen trips to Idaho between July 10, 1986, and September 26, 1987, and that twelve of those trips involved weekends off, Russell did not charge any personal expenses to the government. "Russell [as the agency's 'approving official'] was in a position to arrange his own travel schedule and if he made personal as well as official contacts on his own time during these trips, that was his affair," the report concluded (EPA 1988).

Again, some EPA staff members were stunned and disappointed.

In March 1989, Russell had refused to make public a draft EPA analysis concluding that Idaho potatoes might pose a health risk because the pesticide aldicarb was used on them. An EPA guerrilla leaked the information to the press. Upset citizens contacted the White House, the EPA, and state health and environment officials. Grocery stores around the world pulled potatoes from the shelves. Russell responded by making public a letter to Governor Cecil Andrus of Idaho, indicating that he shared the governor's irritation about the unauthorized leak and emphasizing that there was not enough scientific

evidence to prove a negative health effect from eating potatoes that had been treated with the pesticide.

In June 1989, Russell was reappointed by the new EPA administrator, William Reilly, after George W. Bush became president. Within weeks, EPA employees sent a self-initiated, in-house survey slamming Russell to Reilly. Environmentalists from three states joined in, sending Reilly a letter calling for Russell's ouster. The environmentalists' letter, which received wide press coverage in the northwest United States, was signed by the Sierra Club, Friends of the Earth, the Oregon Natural Resources Council, the Washington Toxics Coalition, the Alaska Center for the Environment, and the Northern Alaska Environmental Center. Using data that had been supplied by EPA guerrillas, the letter fired off specific accusations: Russell spent three times as many days in Idaho as in other states in the region; he supported the navy's 1987 decision to dispose of toxic dredge spoils in Puget Sound; he approved the filling of a wetland in Warrenton, Oregon, for a shopping mall over the objections of EPA staff; he approved less-stringent water pollution discharge limits than had been recommended by EPA staff for four sites in Washington State: Fort Lewis, Bangor, McChord Air Force Base, and Hanford. Three of the four sites had experienced groundwater contamination as a result of the administrator's decision, the letter said.

In response to the criticism, Russell issued a defensive press release pointing out that he had the full support of EPA administrator Reilly. He emphasized that he had tried to "bring balance" to the administration of environmental laws and regulations. At the same time, he acknowledged his critics, saying, "I can see where some environmentalists might not care for my record. I can understand where some businessmen might not care for my record. And, there may be people within my own agency who also don't agree with the course that I have followed" (EPA 1989).

### *Russell's Resignation*

On January 29, 1990, after three and one-half years in the Seattle EPA Office, Robie Russell announced that he was resigning as regional administrator to consider a run for the U.S. Senate or for attorney general of Idaho. (In fact, he ended up doing neither but joined a Seattle law firm.) Many speculated that the real reason for Russell's resignation was the retirement of his "godfather," Sen. James McClure of Idaho. EPA career staff held parties to celebrate Russell's departure.

Additional inspector general audits, prompted by complaints from EPA guerrillas, were under way, and according to one newspaper article, EPA "employees . . . lined up outside the audit team's door to provide it with infor-

mation" (Dietrich 1990b, 5). Complaints ranged from allegations that Russell purchased photos with EPA funds after he had announced his resignation, to charges that Russell or one of his immediate employees asked a local hotel to disguise food and bartender bills paid for with EPA funds as room rental (Wilson 1990),<sup>5</sup> to devastating accusations that Russell tolerated violations of environmental laws. The *Seattle Times* summed up the concerns:

Some EPA employees complained Russell failed to back tough enforcement, sabotaged cleanup efforts that would have hurt industry in his native Idaho and was the target of a still-unreleased audit critical of his performance. . . . Employees lobbied [EPA administrator William] Reilly last year to replace Russell, starting an in-house survey with generally blistering comments about their boss, some of which were mailed to the *Times*. . . . "It has nothing to do with the fact he was a Reagan appointee," one employee said commenting on staff unhappiness. "Reagan appointed Ernesta Barnes before Robie and she was an excellent administrator. We just felt there was a lack of objective decision-making in the agency." (Wilson 1990)

Russell again defended his record by maintaining that he brought "badly needed balance" to the EPA. Environmentalists maintained that he had "stifled a lot of good effort and energy that . . . [had] been coming up from his staff" and vowed to seek a replacement who "has a commitment to environmental preservation" (Wilson 1990).

Two additional Inspector General's Office reports of investigations into Russell's actions during his stint as Region 10 administrator were issued after he left the agency. The first report gave him a symbolic slap on the wrist by charging him \$110 for photographs of himself ordered after he had announced his resignation. The report also supported staff allegations that Russell or one of his immediate employees had asked a local hotel to disguise food and bartender bills paid for with EPA funds as room rental. Concerned senior EPA staff members took up a collection and paid the \$311 bill (EPA 1990).

The second report was more scathing. It concluded that Russell had improperly blocked his own staff's efforts to clean up a Superfund site in his home state of Idaho. A summary of the report concluded:

As a result, the smelter complex was allowed to deteriorate to the point that it was declared a public health hazard, . . . prompt action was not taken to protect the public from contamination resulting from salvage operations, and partners in the Bunker Limited Partnership moved company assets to other corporations through stock and property transfers, which is expected to complicate attempts to recover cleanup costs. (Dietrich 1990a)

As a result, railroad ties covered with poisonous lead dust were sold throughout the Spokane area to nurseries for use in landscaping. Worse, eight years after the mine smelter was closed, eight of 275 children in the area still had unsafe levels of lead in their blood. (Lead causes nerve and blood disorders that can affect IQ and even cause death.) The *Seattle Times* concluded, “The blistering audit is the first official confirmation of EPA employee complaints that Russell discouraged enforcement of pollution regulations in his native Idaho” (Dietrich 1990b). Moreover, the inspector general wrote in the summary accompanying the report, “Nearly every Region 10 employee who we interviewed about the Bunker Hill site expressed fear of retaliation [from Russell]” (EPA 1990).

EPA guerrillas were ecstatic. Their guerrilla government activities had paid off. They had successfully stemmed the reign of terror started years earlier by John Spencer. Future regional administrators would know that they were a force to be reckoned with.

### Questions to Ponder

The actions of government guerrillas generally, as well as the specific case of guerrilla government in the EPA’s Seattle regional office, pose many questions for those grappling with the study of ethics. This chapter concludes with questions to think about as you sort out what I call “the ethics of dissent” (O’Leary 2006).

1. Were the actions of the Seattle EPA staff justified? Why or why not?
2. Does subject area make a difference? If the guerrillas profiled in this chapter had been white supremacist zealots, would it change your analysis of their actions?
3. If you think of the Reagan administration political appointees as the guerrillas, does this change your analysis of the case?
4. Was the Seattle EPA staff the embodiment of stubborn and misguided institutionalization—long-timers who represent a different culture from the new political leaders voted in by the American people?
5. Is there a difference ethically between a concerned public servant seeking out the support of an elected official and a concerned public servant seeking out the support of the media?
6. Contrast the management style of Ernesta Barnes to that of John Spencer and Robie Russell. Are there lessons that can be gleaned from such a comparison?



7. Should career public servants "just suck it up" (to quote one of my graduate students) and loyally follow new political appointees, even when they feel there is a lack of objective decision-making?
8. What were the other options available to the Seattle EPA staff?
9. If you are a government guerrilla, how do you really know when or if you are right? Where do you draw the line between sincere concern and arrogant hubris?
10. When do ends justify the means?

## Notes

1. In addition to Gorsuch and Spencer, from February 1 through May 21, 1983, the following EPA political appointees resigned or were fired: Rita Lavelle, assistant administrator for solid waste and emergency response; Warren Wood, aide to Lavelle; Susan Baldyga, aide to Lavelle; Eugene Ingold, aide to Lavelle; John Horton, assistant administrator for administration; Mathew Novick, inspector general; John Hernandez, deputy administrator, acting administrator; Robert Perry, general counsel; John Todhunter, assistant administrator for pesticides and toxic substances; Paul Cahill, director, Office of Federal Activities; John Daniel, chief of staff; Steve Durham, administrator, Denver Regional Office; Richard Funkhouser, director, Office of International Activities; Frederic Eidsness Jr., assistant administrator for water; Kathleen Bennett, assistant administrator for air, noise, and radiation; Peter Bibko, administrator, Philadelphia Regional Office; Lester Sutton, administrator, Boston Regional Office; Michael Sawyer, aide to the administrator, Office of International Activities.

2. The two mills were Alaska Pulp Corporation, in Sitka, and Louisiana Pacific, in Ketchikan.

3. Barnes said publicly, in many speeches, "We have been led to assume that the basic costs of living are low. It's going to be a hard lesson . . . for a lot of Americans to learn that it costs a lot to dispose of our garbage [and] to address our pollution problems" (Nelson 1984, 8).

4. Perhaps the best example is her ordering joint action with the state of Washington against the U.S. Department of Energy's Hanford site for violations of hazardous waste laws.

5. Russell also was charged with reckless driving after he allegedly tried to run down two University of Idaho students working as traffic controllers when they refused him access to a VIP parking lot at a basketball game. Russell was the national president of the University of Idaho Boosters Club at the time.

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## Tacit Knowledge

### The Foundation of Information Management

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While the necessity of the exercise of discretion is not disputed, the attitude toward it is often described as ambiguous and even ambivalent, with sparse normative foundations (Bryner 1987). Discretion represents a judgment as to what activities in an agency are to receive a priority. Exercising discretion presumes that both the need for judgment and the capacity to exercise it are not just about implementing “routine” activities.

Situations and circumstances drive the decision to exercise discretion. Judging events and circumstances at moments in time and then acting on that judgment ensure proper discretionary decision-making. Those a priori judgments are largely informed by an understanding that emerges from the application of specific individual and organizational tacit knowledge (Cox, Hill, and Pyakuryal 2008). The capacity to make sense of the situation and judge, and therefore to *understand* and then act, is intertwined with tacit knowledge.

What exactly, then, is tacit knowledge? Tacit knowledge is procedural knowledge that guides behavior (Sternberg 1999). It is acquired largely from experience, and its utilization often results in highly effective execution of tasks. Often “invisible” and not readily available for introspection, it serves to fill the gaps of what can be seen and provides a more complete picture of the future, which is essential for making higher-quality decisions (Cox, Hill, and Pyakuryal 2008).

Tacit knowledge affects our sense-making capacity, but critically it constitutes our capacity to understand. By understanding we mean the capacity

to “judge particulars” and then act upon that judgment (Arendt 2003). Tacit knowledge is developed by “learning and unlearning through experience and knowledge in motion” (Baumard 1999). Learning occurs at both the individual and collective (organizational) level, and knowledge shifts between tacit and explicit and from individual to organizational knowledge. It is, however, tacit knowledge that guides behavior, and its utilization often results in highly effective execution of tasks by allowing higher-quality decisions (Brockmann and Anthony 2002).

Very often the difficult or hard choice that a public servant makes is not whether to help someone, but to define the limits of that help or to determine ethically when to end assistance (Burke 1994). This is precisely the situation for which neither bureaucratic routines, nor policies, nor court rulings can provide professional guidance. It is the individual and organizational tacit knowledge that leads to good, consistent decision-making informed by the understanding that emerges from the application of specific individual and organizational tacit knowledge.

This chapter defines the individual and organizational parameters within which the ethical exercise of discretion may occur, and it demonstrates (through the help of case studies) that those who should exercise discretion are those with tacit knowledge. It elaborates on how discretionary judgments emerge from the practices and activities of tacitly defined informal networks. Further, this chapter explains why those who are positioned to exercise discretion should possess the demonstrable capacity for judgment that is variously labeled maturity, instinct, or skill.

### **Aspects of Tacit Knowledge**

Tacit knowledge is the work-related practical knowledge that is learned informally on the job. It is intimately related to action such that it reflects *understanding how* as contrasted with *knowing what* and is acquired without direct instruction or help from others (Brockmann and Anthony 2002). People in organizations apply both tacit and explicit knowledge to understand the world around them (Gherardi and Nicolini 2003; Stati 2003). “It is in fact the interaction of explicit and tacit knowledge that allows organizations to make sense of their environment, by appealing to both . . . to control and modelization (explicit knowledge), and organizational memory, to their experience and that of others, and to intuition (tacit knowledge)” (Baumard 1999, 8). The downside of tacit knowledge, however, is that often it is “invisible”; it represents how people act unconsciously and intuitively.

When a unique situation arises in an organization, it brings along new uncertainties as well as new alternatives; decision-making then selects courses

of action that are expected to perform well given the understanding of goals and the conditions of uncertainty (Choo 2002). This results in the capacity to develop new knowledge by a process of complex interplay between existing knowledge and tacit knowledge within an organization. Working (Hummel 2005) in an organization emerges from understanding of the circumstances and events that result in actions, which is close to the application of tacit knowledge. Understanding in turn is influenced by an individual's values. Day (1999) argues that unless the decision-making process is supported and reinforced by the individual's attitudes, values, and behaviors, it is bound to fail. These sources of the values that Day finds so powerful are found in the ideas of Max Weber.

Weber addresses the importance of vision, purpose, and a "future orientation" as the ethics of his "mature man" who does not shrink from the responsibility to "reach out for the impossible." Ethical leadership for Weber is rooted in the willingness to steadfastly look to the future, even as the bureaucratic routine insists upon being grounded in the present. The mature man is the one who "is aware of a responsibility with his heart and soul. [He] . . . acts by following an ethic of responsibility and somewhere he reaches the point where he says: Here I stand: I can do no other" (Weber 1947, 128). The key to this perspective is the emphasis on the consequences of actions, not merely their purpose. It emphasizes consciousness of the situation and the exercise of judgment based upon experience and the desire to do what is right.

Can Weber's concept of "maturity" therefore be linked to the possession of tacit knowledge? It is internalized and socialized tacit knowledge that dominates understanding, deciding and acting in emergencies (precisely when discretionary judgment is most needed). We are constantly struggling to balance the generalized demands of the normative with the specific requirements of making a decision in the present. As we gain maturity, the recognition of the need to balance these values and the capacity to do so are indicators of having achieved tacit knowledge.

### **Implications of Tacit Knowledge**

Situations and circumstances drive the decision to exercise discretion. Whereas explicit knowledge allows organizations to react to events after the fact by using bureaucratic rules, tacit knowledge frees organizations from these confines. Arendt (2003), following Kant, asserts that thinking and judging are interrelated but separate. Thinking is the result of forming abstractions. Judging is the first step toward deciding (deciding to decide, as it were). It is the product of understanding the situation in its fullest sense. She goes on to posit that some individuals are better at one activity than the



other. Therefore, one could do well at abstract thinking and another could be better at judging. Judging follows thinking and knowing and emerges from understanding. It is the capacity to understand that is the key aspect of judging.

The obvious dilemma for organizations is in recognizing these different capacities and assigning persons roles that fit those capabilities. The “problem” of the exercise of discretion is embedded in this dilemma—we need those with the capacity for judging, not those with the capacity for thinking, to exercise discretion. It is a problem precisely because the need for discretion arises when the situation is not routine—that is, when the situation and circumstances, not the abstractions such as standard operating procedure, dictate. Those with the capacity to think can (and will) develop appropriate standards of performance and behavior; those with the capacity to judge will understand when it is time to step outside the routine.

In other words, those who should exercise discretion are those with tacit knowledge. The true problem of discretion occurs when the wrong person exercises discretion. What then are the sources of this mismatch between the capacity to judge and the responsibility to judge? This intertwining of tacit knowledge and discretionary judgment suggests four causes: inexperience, lack of knowledge, burnout (diminished capacity), and corruption.

### *Inexperience*

While inexperience is most obviously a problem endemic in newly hired (or newly promoted) workers, inexperience also exists when persons have not yet been socialized into the organization. According to Weick (2001), sense-making in the workplace is gained through experience. Work that is very narrowly defined (faculty versus administrators in American universities) or done in isolation (the police officer on the street, the worker in a field office) can also reflect a kind of inexperience. In both of these instances there is no opportunity (or the opportunity is not recognized) to combine and/or internalize knowledge. Inexperienced workers are not yet committed (Weick 2001). As such they cannot act and without that action they cannot make sense of the organization. They are hesitant and apparently indecisive because the cues, which lead to acting, are not recognized.

The *Columbia* space shuttle disaster epitomizes the problems of inexperience (and lack of knowledge). As noted by Mahler and Casamayou (2009, 5) in their study of the two shuttle accidents,

Although the technical flaws behind the *Challenger* and *Columbia* accidents differed the accidents themselves were eerily similar in several ways. Of

course, both were highly visible disasters, but both also involved a series of organizational and managerial failures.

Decision makers were isolated, were under intense pressure to launch, did not listen to experienced engineers, and did not or could not openly acknowledge and discuss unresolved problems. . . . The organization had received early warnings of safety problems in both cases, but it failed to take them seriously.

Both the choice to express concerns informally and the confusion over the request for imagery to confirm the extent of damage were the products of inexperience. Uncertainty about how to do data collection to make decisions left those decisions to the members of a mission management team that, in the words of the *Columbia Accident Investigation Board* (CAIB), were “more concerned about the staff following the proper channels (even while they were themselves taking informal advice) than they were about the analysis” (2003, 172). This problem was made still worse by inexperience elsewhere in the process:

*An inexperienced team using a mathematical tool that was not designed to assess an impact of this estimated size performed the analysis of the potential effect of the debris impact. . . . Crater [a crater analysis technique] initially predicted possible damage, but the Debris Analysis Team assumed, without theoretical or experimental validation that because Crater is a conservative tool—that is, it predicts more damage than will actually occur—the debris would stop at the tiles’ densified layer, even though their experience did not involve debris strikes as large as STS-107s.*

As a result of a transition of responsibility for Crater analysis from the Boeing Huntington Beach facility to the Houston-based Boeing office, the team that conducted the Crater analyses had been formed fairly recently, and therefore could be considered less experienced when compared with the senior Huntington Beach analysts.

At the January 24 Mission Management Team meeting at which the “no safety-in-flight” conclusion was presented, there was little engineering discussion about the assumptions made, and how the results would differ if other assumptions were used.

Engineering solutions presented to management should have included a quantifiable range of uncertainty and risk analysis. Those types of tools were readily available, routinely used, and would have helped management *understand* the risk involved in the decision. Management, in turn, should have demanded such information. The very absence of a clear and open discussion of uncertainties and assumptions in the analysis presented should have caused management to probe further. (CAIB 2003, 168; emphasis added)

As Mahler and Casamayou (2009, 5) note, “the *Columbia* Accident Investigation Board concluded that NASA is not a learning organization. . . . The charge that NASA did not learn is especially puzzling in light of the attention paid inside and outside the organization to improving those organizational features that contributed to the accidents.” A partial explanation is in the inexperience of some of the analysts assigned to do risk analysis. Like all new people, they accepted at face value the tools at hand. Their dependence upon statistical tools is reminiscent of the miscommunication between managers and engineers in deciding to let the *Challenger* launch despite the misgivings of engineers about the O-rings. As Hummel (2007) notes, the engineers had a “gut feeling” (tacit knowledge) that they could not quantify, yet the managers would accept the conclusion of the engineers on-site only if it was based on quantifiable data (which would require days, not hours, to produce). The engineers did not anticipate the requirements of management. In their inexperience they held to known routines and methods (explicit knowledge), avoiding opportunities to exercise discretionary judgment. They did not trust their understanding of the problem, opting to accept the norms and expectations of the hierarchy.

The more often a person takes on a new role or position, the more often one returns to the inexperienced state. As in Hersey and Blanchard’s (1972) idea of life cycle supervision, inexperience also changes one’s role within the decision hierarchy. The exercise of discretion under such circumstances is both difficult and likely to produce errors. Trust is important (Edwards and Kidd 2003), but trusting necessarily becomes rash in this state of inexperience. Avoiding quick judgments and having as long a honeymoon period in the new position as possible is helpful. However, it has to be mentioned here that such caution is a two-edged sword if one is there as a “change” agent. Many such change efforts fail because the change agent waits too long to initiate change, affirming for some that nothing would change. Getting up to speed quickly is not about mastery of the work or even the role, but rather about comprehending the history of prior successful and unsuccessful behaviors.

No less than for the supervisor in the Hersey and Blanchard life cycle, training someone to gain proficiency is the proper role of a mentor (who connects the new employee to the internal, informal network). The mentor provides the history lessons, but also introduces the newcomer to the information communication network within the formal organization where organizational learning takes place.

The reality is that acting too soon (errors of commission) rather than too late (errors of omission) may be the better course. Supervisors must be tolerant and even supportive of such eagerness. Subordinates must help avoid this error by warning the new supervisor of the implications (based on history). In

general, waiting too long to affirm one's authority or role is the greater failure, especially since mistakes will be made in almost all cases. Judging when to act is a tacit knowledge decision, and the cues to understanding when to exercise discretion are available as no situation is wholly new. The way out of the state of inexperience is recognizing and understanding those cues.

Inexperience in the workplace must be addressed in two ways. First is the simple reality of gaining experience by being engaged in the job itself. The second, however, and the more critical path is in understanding those experiences in the context of the work—that is, to be open to tacit knowledge. Those who are new to the job but not new to the work have the capacity to gain new tacit knowledge because they have the work experience upon which to base new knowledge. Inexperience in one who has been promoted should be relatively brief. It should be apparent within a very few weeks or months whether or not a promotion within the work is a success. The understanding that is the basis for the capacity to do the earlier job serves to aid advancement in the new job. On the other hand, when an employee is promoted into new work, then the learning curve is longer. Organizational routines (both formal and informal) are new. Pathways of decision-making (which rarely match the hierarchy of the organization chart) are new. The exercise of discretion and ethical decision-making are complicated by that inexperience, as is evident in regard to mismanagement in the City of Toronto's software leasing experience as summarized in Exhibit 11.1.

### *Lack of Knowledge*

From one perspective, inexperience and lack of knowledge are related. Without experience, knowledge and particularly tacit knowledge cannot emerge. There is also the question of the individual worker's capacity to learn and gain knowledge. Some have a good feel for a job and learn quickly. For others learning is a struggle. The inability to comprehend and acquire tacit knowledge plays a significant role in halting learning.

The above commentary has both an individual and organizational dimension; individuals may be knowledgeable, but the organization may not listen. While explicit knowledge is articulated knowledge, tacit knowledge often is "inarticulate" (Baumard 1999). Unless there is a conscious effort to transform and translate (Gherardi and Nicolini 2003) individual knowledge into tacit, organizational knowledge, this problem will continue. The "tragedy" of the failure to internalize and socialize or transfer tacit knowledge is in the inability of managers to comprehend and appreciate the importance of a "feel" for things that people close to the work may possess. Lack of knowledge is different from inexperience, and the use of on-site trainers

### Exhibit 11.1 Example: Inexperience

The following is drawn from the City of Toronto's *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry* (commonly referred to as the Bellamy Commission):

One specific and expensive example of mismanagement following the leasing contract with MFP Financial Services Ltd. was the way Oracle software was put on lease with MFP.

On December 31, 1999, the eve of Y2K, the City bought 10,000 Oracle "enterprise licenses," along with technical support for five years. . . . Enterprise licenses were the most costly type of license available from Oracle. The whole amount of software and support was put on lease with MFP. There was no competitive process for this acquisition.

. . . There was no financial analysis of Oracle's proposal or of the effect of leasing the acquisition. There was no clear chain of authority for spending that much of the taxpayers' money.

What the inquiry's investigations into the Oracle deal did reveal was a stunning lack of basic information, a haphazard approval process, hit-or-miss record-keeping, selective amnesia about attendance at relevant meetings, dubious use of a special Y2K procurement approval mechanism, and minimal involvement of legal counsel.

Lana Viinamäe did not prepare a business case for this acquisition, even though detailed business cases were mandatory for priority requests to the Y2K Project. Without the business case, it was virtually impossible to evaluate whether the oral acquisition made sense. She didn't do her own analysis, relying solely on Oracle's projections of the City's future license needs.

She predicted doom if these licenses were not acquired by December 31, 1999, but neither the Y2K Steering Committee minutes nor witnesses supported her view. . . .

It made no sense at all for the City to put all 10,000 licenses on lease with MFP. A lease composed of only software is unusual, since software has no residual value at the end of the lease. Putting maintenance contracts on lease makes even less sense. The City ended up making quarterly payments on five years of support, even though Oracle billed, and MFP paid, only a fifth of that at the beginning of each year.

Without a proper analysis, it was impossible to know whether acquiring and leasing 10,000 Oracle licenses was really a good deal for the City. It is now impossible to determine how many or what type of licenses the City really needed in 1999 or the optimal level of support it needed for them. The City did not attempt to compile that information until 2002. The most up-to-date Oracle analysis in May 2003 showed only 5,972 Oracle users. In hindsight, it is not at all certain that the City needed 10,000 enterprise licenses.

*Source:* Bellamy 2005, 75–76.

to help people unlearn theory is often the bridge. Police departments use field training officers (FTOs) in this way. While they would not characterize this as unlearning, this is what it amounts to—being introduced to the folk wisdom and folkways of the organization. The FTO is a mentor, preparing

a new employee to be integrated into the organization both in terms of work and culture. Just like the guild model upon which it is based, this method of mentoring is predicated upon a fairly long apprenticeship. It is also highly dependent upon the skill and knowledge of the mentor. Creativity may be stifled and habits of corruption may be established here. The FTO/mentor roles are critical to the direction of a new employee's career, as the mentor is the one who introduces discretion as actions to ensure equity for another. Understanding the obligation to provide or help find answers is the basis of a successful organization. The organization is enhanced to the extent that every employee embraces the role of FTO.

Learning, both explicit and tacit, is needed in every organization. Training that emphasizes standard knowledge must be supplemented by sharing of tacit knowledge and experience. A learning model based upon androgogy is a start, but insufficient. Practice is also critical to learning; however, it is the dissemination of tacit knowledge present within the organization that leads to sound organizational decision-making. The shuttle tragedies at NASA, nearly two decades apart, both had their roots in the requirement of senior managers that people on-site express their concerns in explicit language (because that was the only language that the managers recognized as valid). The final report of the *Columbia* Accident Investigation Board (2003, 172) essentially offered two explanations for the *Columbia* tragedy: first, the technical and material failures that caused the tiles to break off, and, second, a failure of management.

Ferraris and Carveth (2003) suggest that a form of "groupthink" prevailed in the *Columbia* accident. Certainly the possibility of a major problem was rejected early in the process. This resulted in a bureaucratic battle (Allison and Zelikow 1999) over who could or could not request imagery and from whom. While Allison and Zelikow assert that such internal organization conflicts are frequent, it is possible that a better appreciation of the extreme and threatening nature of the debris strikes would have mitigated some of this conflict. The lack of knowledge of the limitations of their computer tools by the risk analysts and the failure of managers to understand the engineers' reluctance to speak up at meetings proved a lethal combination. As Tufte (2005) has argued, even the use of PowerPoint slides to present data became a barrier to appreciating the danger. As the *Columbia* Accident Investigation Board (2003) would note, in part because there was no sense of urgency, "program managers required engineers to prove that the debris strike created a safety-in-flight issue; that is, engineers had to *produce evidence that the system was unsafe* rather than prove that it was safe" (CAIB 2003, 172; emphasis added). The expectation was that the standard operating procedures and routines (explicit knowledge) were sufficient. In such cases, the lack of tacit knowledge creates a situation in which judgment

is limited to letting the routines play out. The sense that a nonroutine action (the exercise of discretion) is required is absent. Transferring knowledge of the difference between “how things work” based upon subroutines and standard operating procedures as opposed to “how things work” in reality is a problem shared by both the field training officer and (less successfully) the engineers at NASA. In both cases, the issue is the need to create new (tacit) knowledge in individuals and the organization, as was the case with NASA’s need to build a new organization culture of safety as discussed in Exhibit 11.2.

### ***Burnout***

In the United States, the problem of “burnout” has been noted for many years. This problem is often associated with role conflict: the professional expectations of the worker and the organization’s work rules conflict (see, among others, Hummel 1986, 1994; Selden et al. 1999). Here burnout becomes a problem of diminished capacity. The knowledge may still exist within the individual and potentially within an organization, but the role conflict leaves the worker without the will to act. Organizations that are under threat of dissolution (a common problem in American government) often display the same ennui that Hummel (2007) sees in individual cases of burnout. These organizations (much like the individuals) are merely going through the motions. If we were to frame this point differently, these are organizations in which the informal organization is not performing properly; where organizational learning has ceased.

At its root, burnout is the suspension of the belief that things will change. It is the loss of a sense of mission and purpose. The burned-out employee no longer seeks to understand a situation or circumstance; discretionary judgment is no longer an option. Finding a quick resolution to a situation by reference to the past, generally to a rule or decision, is the first choice.

The stereotype of the rules-obsessed bureaucrat is a burned-out public servant. Convenience and minimal effort are the basic behavior patterns. Formalized equality for all is the norm, regardless of the circumstances, because that simplifies the decision process. Failure to distinguish circumstances becomes a sign of acute burnout. In this state, work is based upon looking backward. The reason that burnout often occurs in social services organizations is the “disconnect” between attitudes fostered and the reality of the work (Sarros 1988). This creates a dissonance between the perceived and actual mission.

Professional programs, which evoke compassion and advocate a distrust of *politics*, leave public servants unsuited for the work, pushing them to become naïve and insufficiently skeptical. Although often labeled as role dissonance, this behavior goes beyond role conflict (Cox, Buck, and Morgan 2011,



**Exhibit 11.2 Example: Lack of Knowledge**

The following is an excerpt from the *Columbia* Accident Investigation Board:

In the Board's view, NASA's organizational culture and structure had as much to do with this accident as the External Tank foam. Organizational culture refers to the values, norms, beliefs, and practices that govern how an institution functions. At the most basic level, organizational culture defines the assumptions that employees make as they carry out their work . . .

Given that today's risks in human space flight are as high and the safety margins as razor thin as they have ever been, there is little room for overconfidence. Yet the attitudes and decision-making of Shuttle Program managers and engineers during the events leading up to this accident were clearly overconfident and often bureaucratic in nature. They deferred to layered and cumbersome regulations rather than the fundamentals of safety. The Shuttle Program's safety culture is straining to hold together the vestiges of a once robust systems safety program.

As the Board investigated the *Columbia* accident, it expected to find a vigorous safety organization, process, and culture at NASA, bearing little resemblance to what the Rogers Commission identified as the ineffective "silent safety" system in which budget cuts resulted in a lack of resources, personnel, independence, and authority. NASA's initial briefings to the Board on its safety programs espoused a risk-averse philosophy that empowered any employee to stop an operation at the mere glimmer of a problem. Unfortunately, NASA's views of its safety culture in those briefings did not reflect reality. Shuttle Program safety personnel failed to adequately assess anomalies and frequently accepted critical risks without qualitative or quantitative support, even when the tools to provide more comprehensive assessments were available.

Similarly, the Board expected to find NASA's Safety and Mission Assurance organization deeply engaged at every level of the Mission Management Team, the Debris Assessment Team, the Mission Evaluation Room, and so forth. This was not the case. In briefing after briefing, interview after interview, NASA remained in denial: in the agency's eyes, "there were no safety-of-flight issues," and no safety compromises in the long history of debris strikes on the Thermal Protection System. The silence of Program-level safety processes undermined oversight; when they did not speak up, safety personnel could not fulfill their stated mission to provide "checks and balances."

*Source: Columbia Accident Investigation Board 2003, 177–178.*

164–165). What is different here is that the public servant ceases to care. The distance between the work and the mission leads to mission failures, which directly impact the future of an organization. This dissonance transforms into an organizational phenomenon.

A common version of burnout occurs when managers choose to avoid their responsibility to conduct performance appraisals. As the case example below suggests, the unwillingness to judge performance often leads organizations to treat all personnel equally.

### Exhibit 11.3 Example: Burnout and Performance Appraisals

An interesting case study of how we conduct performance measurement is in its use as part of employee evaluations and appraisals. . . . Two problems emerged; first, the considerable resistance by workers and managers to include team and organizational factors in the evaluation, and second, the tendency of managers to use simple, numerically based factors to judge performance. The former problem is partly cultural. Americans are uncomfortable in situations where their individuality is not acknowledged (try to grade students on the basis of a group project and hear the complaints about how much "harder" the student worked than everyone else!). It is not relevant that we recognize that we are dependent upon others to accomplish our work. Hummel (1994) would argue that workers intuitively understand that their work activities are unrelated to organizational goals. To have part of their performance appraisal based upon the accomplishment of organizational goals is to automatically give them a failing performance rating. Since it is the managers who have a major responsibility for goal displacement, evaluating workers on the basis of organizational goals will make known this simple fact. The use of numerically based measures is simply an affirmation of the goal displacement. The argument that performance appraisals are "qualitative" was a deeply troubling revelation for many managers. To them a qualitative judgment was biased and "wrong." Only a quantitatively formulated appraisal process, whereby the sum of a set of numbers yielded a result, was appropriate. As performance measures were proposed, a simple question was asked, "Can this measure be answered with a 'yes' or a 'no,' or must it be judged on a scale?" If the measure could be answered with a "yes" or "no," then it was rejected (clerical staff were often given a scaled ranking on whether or not work was submitted on time, or "neatly"! ). The managers did not want to be a "judge." They wanted the numbers to be the judge, so that they could not be held "responsible" for the rating. This abdication of responsibility in the name of objectivity is a prime example of goal displacement. Performance appraisals were not a way to improve organizational performance and develop employees; they were simply a "task" to be performed with as little time and thought as possible.

If we are unwilling and unable to develop measures by which to judge the performance of colleagues and peers, how can an organization expect these same persons to develop appropriate measures by which to judge *organizational* performance? The obvious answer is that they cannot. But once performance appraisals of the individual are separated from any relationship to organizational performance, then both activities can be conducted without recognizing the incongruity of the practices.

*Source:* Cox 2002.

The unwillingness to exercise discretion means that equality of treatment is preferred over equity. Although not unmindful of the consequences of sacrificing any attempt at equity, the public servant rationalizes that this is what the organization wants, thereby suspending all judgments. In the absence of the willingness (or capacity) to exercise judgment, decisions become mere compliance to rules and the basis for understanding gets removed. Since everything appears the same, decisions under such circumstances become

similar. The obsessive pursuit of equality is now the norm. The practice is defended by the assertion that the rules are being enforced and that the rules trump personal judgment. If discretionary decision-making were mere personal whim, such a challenge would be valid. However, the simplistic distinction between following the rules and not following the rules is false. The exercise of discretionary judgment is not a rejection of rules compliance, but rather the reassessment of the range of rules that may apply to ensure equity. Sorting through the rules is not easy. It requires the creativity and innovation of tacit knowledge. Discretionary judgments are made to benefit the citizen, not the public servant. In reality, mindless rule compliance is done to simplify the work for the decision-maker.

The simple answer to the problem of burnout is to facilitate transfer of the employee. This person may not be able to change unless there is significant organizational change. A new work setting with a better mission fit may help the public servant regain a sense of the need to balance equity and equality. This may require a supervisor to help someone move on. This is, however, a risky strategy fraught with ethical issues. In any case, individuals working for an organization's success need to recapture a sense of connection to the mission and thus a sense of a future, as can be understood in Exhibit 11.4 that characterized employee burnout in the U.S. Food and Drug Administration.

### *Corruption*

Corruption extends beyond the simple problem of individual bad behavior. Even where corruption is common, the tendency is to focus on individual transgressors, implying that the problem is caused by a few "bad apples" (Johnson and Cox 2004–5). Our analysis, however, would suggest that corruption is more ingrained. It is learned behavior, and it survives because the organization has learned that such behavior is justified; that it, it has become internalized tacit knowledge. While those on the outside may find the behavior incomprehensible (Bok 1978; Hope 1999), those inside the organization have successfully rationalized the behavior and incorporated it into the organization's customs. As Arendt (2003) notes, corrupt persons seemingly have an infinite capacity to excuse their own behavior.

As far as the criminals themselves are concerned, the chief common weakness in their character seems to be the rather naive assumption that all people are actually like them, that their flawed character is part of the human condition stripped of hypocrisy and conventional clichés (Arendt 2003, 268). Stopping corruption does not begin or end with identifying the criminal act of the individual, but in uncovering the organizational cultural behaviors that

**Exhibit 11.4 Example: Burnout and Discretionary Judgment**

In a series on the Food and Drug Administration (FDA) for Time.com in 2009, Kathleen Kingsbury addressed the problems of overwork at the FDA. What follows are excerpts from that series:

The FDA has increasingly found itself in a delicate balancing act when it comes to the approval and oversight of medications and vaccines. Drugmakers frequently complain that the agency's approval process is long and cumbersome and that its red tape denies patients desperately needed medications; however, the agency's advisory committees and scientists have sometimes criticized it for fast-tracking approvals, seemingly under political or industry pressure. At the same time, the FDA, lacking resources to monitor the safety and proper use of drugs once they're on the market, frequently shoulders the blame when harmful effects later arise.

... Federal studies reveal that the FDA doesn't have a complete or accurate list of prescription drugs on the market and is missing or has incomplete information on one-third of the drug-safety and efficacy trials under way. Over the past three years, the inspector general at the Department of Health and Human Services found that the FDA had inspected only 1% of clinical-trial sites from 2000 to 2005 and lacked financial disclosure data for clinical investigators in half of all industry drug reviews.

By 2008, after the painkiller Vioxx and the cholesterol-lowering medication Baycol were pulled from the market because of side effects and complications, House and Senate overseers both began investigations of the drug-approval process and the relationship between the drug industry and its federal minders

....

But with the FDA ever more dependent on industry user fees, and with new drug-safety concerns emerging year after year, it will take more than faster data retrieval to restore the reputation of an agency that was once synonymous with trust in the public mind. The FDA will have to start forcing companies to be transparent and call them out on it when they're not. Says the medical reviewer Misbin: "Companies are always going to present their best face. It's our job to say no." In that sense, the FDA just needs to perform the task it was charged with more than 100 years ago: protecting the public interest by keeping industry honest.

*Sources:* Calabresi 2010; Kingsbury 2009.

makes the behavior attractive. Exhibit 11.5 characterizes the culture of a UK engineering firm that enables corrupt practices.

One of the great puzzles of government reform is the frequency with which reformers become that which they sought to reform. Leaders who came to power on a pledge of democracy become tyrants. This behavior is the flip side of burnout. In this case, the demands of the role push the public servant to value equity exclusively. Equality of treatment comes to be seen as the opposite of democratic ideals. So much time is devoted to righting wrongs (such as those depicted in Exhibit 11.5) that the public servant becomes ob-

**Exhibit 11.5 Example: Corruption (1)**

A large engineering company operated in a range of domestic (UK) and overseas markets. In at least one of the overseas markets, "arrangements" sometimes had to be negotiated with overseas agents that involved exported goods being artificially reclassified to reduce the level of import duties in the overseas country. . . . When these situations arose, the unofficial but well understood procedure within the engineering company was for the requested "arrangement" to be passed directly to the sales director and managing director. This ultimate decision-making unit would weigh the risks, the returns, and the implications of the decision and then decree whether the proposed deal with the agent would be sanctioned. This was clearly illegal, yet it was argued to the researcher that such behavior was necessary in order to stay in the markets concerned and to protect jobs in the United Kingdom. Other operators in these markets, it was claimed, offer similar "arrangements." . . . The waters were further muddied when the management of the engineering company argued that the government of the overseas country operated a repressive regime, employing punitive import taxes in order to shore up excessive governmental expenditure on military equipment and governmental largesse.

. . . Whatever the rights and wrongs of the situation, the engineering company was employing criteria and a decision process that allowed a decision to be reached that sanctioned law-breaking activity. If the argument is raised that business is not a precise and neat ethical practice, and that one has to accept that in certain cases ends justify the means, one is accepting a situation where different rules apply in different contexts. No part of a code of behavior can be seen to be inviolate, and every organizational value has its price. This is not to suggest that all laws have to be respected however repressive and immoral, but the behavior of the engineering executives was not law-breaking born from high ideals. The law-breaking was related to organizational and possibly personal gain.

. . . Gifts from overseas clients are an issue for many organizations. In the engineering company, the official practice was for the gifts to be accepted but deposited with the engineering company. They would subsequently be auctioned and the resulting monies donated to charities. However, when a senior manager was given a lavish wedding gift (a vacation worth \$16,000) by an overseas agent, he followed the procedure of disclosing the present to a fellow director but then retained it. The case was well known among the senior management of this company. The nature of the incident and its currency meant that it not only left a sour taste in the mouths of some of the management, but the sense of discomfort was still high at the time of the interviews within twenty-four months after the incident].

*Source:* Lovell 2003, 194–195.

sessed with the individual case without regard to the wider circumstances. Corruption in the workplace will manifest in an unwillingness to follow the rules (though it may be justified as rule compliance). Cutting corners and unwillingness to produce reports or other rule-driven work will be common. This is not necessarily a disruptive employee but is certainly one who will

### Exhibit 11.6 Example: Corruption (2)

The following is drawn from the City of Toronto's *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry* (commonly referred to as the Bellamy Commission):

It was only a single phrase, buried in the mountain of paper given to every Toronto City councilor before a Council meeting—a passing reference in a run-of-the-mill staff report about ho-hum photocopiers. But that single phrase, “current technology lease provider,” would lead to stories about influence, incompetence, ambition, greed, and secrets, and to many, many lies.

... In the aftermath of amalgamation [consolidation of governments into the City of Toronto], Purchasing was coping with an unprecedented blizzard of paper. ...

No one in the Purchasing had any meaningful experience with leasing. Nevertheless, they sought no outside expertise before issuing the call document. They thought that this square-peg acquisition could be hammered into a familiar, round-hole purchasing process.

Purchasing and IT [information technology] were also at cross-purposes about what was being acquired. For example, Purchasing didn't know that IT's idea was to get an open-ended deal with an exclusive leasing vendor of record, with no limit on the amount of equipment that could be leased during that period. Had staff in Purchasing known the facts, the type of tender document issued, its contents, and the evaluation of the bids would likely have been very different.

... Finance staff had some limited involvement in drafting the RFQ [Request for Quotation] ... but for the most part, they took a hands-off approach. This was unfortunate ... A major acquisition like leasing services for the City's IT needs called for a team effort—close communication and co-ordination between IT and Finance. That didn't happen.

Brendan Power [consultant] must bear most of the blame for the woefully inadequate RFQ. He knew he was unqualified to draft it and should have said so and made it clear that expert advice was needed. But Jim Andrew [Executive Director of Information Technology] is also to blame—first, for assigning Mr. Power to be the lead on the RFQ without vetting his ability to do the task and, second, for failing to supervise him in any way. Lana Viinamae [Director of the Year 2000 Project Management Office] also should have provided more supervision to Mr. Power and should have reviewed a copy of the RFQ when she was Acting Director of IT. ...

The way the RFQ was drafted was the foundation of further problems that would plague the City's leasing program. At every turn in the drafting process, key participants failed to protect the City's interests (7, 39–42).

Source: Bellamy 2005, 39–42.

negatively affect others. This is a person who needs to be removed before infecting the entire organization.

Preventing this person from exercising discretion is critical to the organization. Rule compliance is not easily imposed upon someone who sees the rules as applying to everyone except themselves; such an action will likely be interpreted by that individual as proof that rules are arbitrarily applied.

Rule compliance will be seen by such a person as an arbitrary choice, and the disciplinary process will be viewed as illegitimate. No logic, rule compliance, or documentation will convince the corrupt that removing them is proof of their corruption.

The shift that occurs is that while discretion is exercised to ensure equity on behalf of another, corruption amounts to discretion to advance oneself. The shift from the proper exercise of discretion to self-serving corruption may be subtle. Examining the motivation for the exercise of discretion is central. If equity is sought for a client, then the choice can be viewed as correct or incorrect. When it is done for selfish or self-serving reasons (justified by the claim that "everyone does it"), then the line has been crossed.

### **Tacit Knowledge and Information Management**

Those who possess tacit knowledge often have difficulty articulating it. Transforming individual tacit knowledge into something accessible to others (or the organization more broadly) is not easy. Therefore, a critical organizational barrier arises when knowledge is neither internalized nor socialized. Failures of organizational learning produce suggestions for more training (enlarging explicit knowledge) and better communications (generally formalizing communications). In essence, more informal communication and new ways of mentoring and socializing people into organizations are needed to accelerate both individual and organizational learning.

Individuals do not create their values in a vacuum; instead, values are created in a group context (Gortner et al. 1987). The creation of group values is similar to the formation of group norms. Although these "informal rules" are "infrequently written down or openly discussed, they often have a powerful, and consistent, influence on group members' behavior" (Feldman 1984, 288; Hackman 1977). Moreover, tacit knowledge in the form of values and unwritten rules stemming from within the group is likely to transfer and improve the performance of that group (Darr, Argote, and Eppler 1995; Kane, Argote, and Levine 2002). In order to manage tacit knowledge present within an organization, boundaries need to be bridged, between individuals and between organizational units (Edwards and Kidd 2003). What is more important, however, is the awareness that boundaries exist and that they need to be overcome.

Peer evaluations of work performance that take place in an informal structure within an organization are often considered just as, if not more, important than the opinions of the supervisor. The informal organization's communications network constitutes the operational side of peer evaluation. Peer



evaluations play a dominant role in matters such as job satisfaction, morale, efficiency, and productivity of the firm. Additionally, these evaluations help to counter, or check, problems arising from a knowledge deficit, inexperience, burnout, or organizational corruption. Social rewards and incentives are important in managing tacit knowledge since individuals are unlikely to transfer knowledge if utilizing it goes unrewarded (Menon and Pfeffer 2003). Social rewards such as strong ties among peers promote the transfer of tacit knowledge because such relationships are likely to be governed by the norms of reciprocity (Argote, McEvily, and Reagans 2003).

In addition, deliberate care in selecting mentors can promote the use of tacit knowledge within an organization. These are not the mentors who become one's promoter and cheerleader but rather those who understand their primary role as validating reliance upon both explicit knowledge (articulated, rational, technical knowledge) and tacit knowledge (inarticulate, intuitive, sensing, feeling knowledge). More often than may be at first apparent, organizations select the most skilled employees (those having the highest level of tacit knowledge) to supervise work teams. This supervisor is the puzzle-solver who teaches others how to uncover and then address problems. Military organizations, which are not usually considered users of tacit knowledge (commands, after all, are the ultimate in learned, articulated, explicit knowledge), have created positions (the squad or platoon sergeant) in which a major responsibility is the conveyance of tacit knowledge both up and down the organization. Skill is an important part of the information management process because although innate it can be transferred through training (Argote, McEvily, and Reagans 2003).

The application of tacit knowledge is the introduction of "judgment" prior to deciding. Science (and bureaucracy) seek the routinization of knowledge—there is no "judgment." In effect, the individuals and the organization go from knowing to deciding because the routine replaces the judging aspect of decision-making. In this process there is no organizational learning, only rule compliance. However, our concern here is with the need for discretionary judgment because the situation is outside the routine. Under such circumstances the organization needs either new rules or amended rules. This requires "creativity" that comes from maturity—that is, tacit knowledge. Tacit knowledge within an organization can be tapped when coupled with opportunity. Effective management of tacit knowledge results from recognizing those with tacit knowledge and providing them with the opportunity to transfer their knowledge within the organization through interactive organizational relationships (Argote, McEvily, and Reagans 2003).

## Conclusion

As has been stated repeatedly, those that possess tacit knowledge often have difficulty articulating it. But the barrier often is that the knowledge may be neither internalized nor socialized. The implication of this reality is that new ways of mentoring and socializing people into organizations may accelerate both individual and organizational learning; furthermore, strong informal organizations may be formed in this process of sharing knowledge. In this sense, critiques such as the *Columbia Accident Investigation Board* report (2003) and Denise Bellamy's (2005) findings both focus on the right problems, but offer incomplete solutions. Both note failures of inexperience, lack of knowledge, and pressure to take shortcuts but focus on changing the explicit bases of knowledge (new rules, new training). The role of organizational learning of tacit knowledge, spread through the informal organization, is missed. The link between organizational learning, tacit knowledge, and organizational culture is overlooked.

Informal organizations play a vital role in establishing values in any organization. The ideas that are considered to have intrinsic worth or desirability and that are the basic standards and principles that guide action are greatly influenced by groups. The properties of an organization's informal network, such as the extent to which the organization is integrated, its idiosyncratic conventions, its learning orientation, and its values, affect knowledge transfer and performance outcomes (Uzzi and Lancaster 2003).

In order to more precisely address the four negative behaviors (inexperience, lack of knowledge, burnout, and corruption), we can merge them into two broad categories rather than four. The first category incorporates the behaviors resulting from inexperience and lack of knowledge. We designate this as a grasp of the *incapacity for organizational decision-making* in the job. The second incorporates the behaviors resulting from burnout and corruption. We designate this as recognition of the impediments to *integrity of decision-making* in the job.

### *Capacity for Organizational Decision-Making*

The old adage "What you don't know can't hurt you" is decidedly wrong. In expanding our definition of knowledge to include tacit knowledge based upon understanding of the situation, we suggest that it is a lack of understanding (or the capacity for judgment) that is the root of a lack of knowledge. To the extent that an individual has tacit knowledge, the problem of inexperience goes away quickly. The innate capacity to understand creates a steep learning curve. Everyone is inexperienced at the start of a new job. Transitions that include overlapping of assignments between the "old" and "new" employee are a simple and obvious step. Mentoring is the best tool for introducing the new employee

(or newly promoted employee) into the informal organization. Knowing whom to ask to get answers to questions is the first step in addressing inexperience.

We also use narrow definitions of knowledge when we address the issue of a lack of knowledge. The mistakes made in using the wrong channels of communications to seek imagery (which would have shown the extent of damage) in the *Columbia* accident are easily defined as a “communications” problem by new, explicit rules. That similar issues arose in the *Challenger* accident and new, explicit rules did not solve the later problem is one of the puzzles explored by Mahler and Casamayou (2009). When communication dysfunction is seen as a lack of tacit knowledge (in both problem-solving and organization procedure), the solution is not more training. The failure was in the decision to shift responsibility for risk analysis from an experienced team to an inexperienced team, but, more critically, the failure to assign someone from the old team to sit in with the new team meant that valuable informal knowledge was not available to the new team at the moment of crisis.

Our recommendations for improving organization decision-making are as follows:

- Establish mentorships as a way of introducing new employees into the informal network and preparing them to be integrated into the organization both in terms of work and culture
- Create a time for “transition of responsibility” so employees can focus on the organizational, cultural, and informal processes
- Acknowledge and affirm the exercise of “judgment”
- Encourage the creation and fostering of informal organizations
- Use informal organizations for collaborative actions

### *Integrity of Decision-Making*

Both burnout and corruption affect the integrity of organizational decisions. In a Dutch study of attitudes and behaviors involving the acceptance of “gratuities” by police officers, it was found that strict adherence to rules was a necessary ingredient in limiting the behavior (Lambooy, Lasthuizen, and Hubert 2008). Given our broad definition of corruption (abuse of office for private gain), this result should not be surprising. It is the ineffectiveness of both the formal and informal rules that leads to corruption. As noted in a case study on whistle-blowers (Lovell 2003), many people are content to permit behaviors that they know are corrupt to continue. Implicitly and often explicitly, such behaviors are endorsed by the organization. Burnout connects to corruption in that both are selfish or self-referential behaviors. In a way, the apparently benign version, burnout, is the more insidious. Corruption certainly exists and

is embedded in the culture of some public organizations, but burnout born of cynicism is pervasive. Retaking the ethical high ground is needed to combat such cynicism. Unrealistic expectations about the capacity of government enterprises are at the root of this problem. Government organizations are no more, nor less, successful than others at achieving their mission. Given that the complexity of the mission of many government agencies is marked by ambiguity and contradiction, it is a testament to the dedication of public employees that as much gets done as it does. We must better understand the incomplete nature of most assignments; funding changes, policy changes, politics changes. To act ethically and with integrity is to do as best one can under the circumstances. High expectations may help enact policy, but administrative realities dictate the definition of success. Cynicism may be born from the unreasonable expectation that the policy made can be implemented.

Our specific recommendations to support integrity in decision-making are as follows:

- Create models of organizational behavior that emphasize what to do and how to do it, not merely what not to do;
- Align organizational goals with realistic assumptions of organizational potential and likelihood of achievement;
- Acknowledge problem-solving as a valued attribute of organizational and individual performance assessment.

To sum up, discretionary judgments emerge from the practices and activities of tacitly defined informal networks, and those who belong in the realm where discretion is exercised should possess the demonstrable capacity for judgment that is variously labeled maturity, instinct, or skill.

This chapter has offered ideas on defining the individual and organizational parameters within which the ethical exercise of discretion may occur and demonstrates, through the help of case studies, how imperative tacit knowledge is to effective organizational decision-making. It elaborates on the role of organizational learning, management, and utilization of tacit knowledge and on the link between tacit knowledge and informal organizations.

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## **Part IV**

### **Ethics in Nonprofit Organizations**

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## The Prospects for Reconciling Sector-Specific Ethics in a Context of Blurred Boundaries, Ubiquitous Networks, and Hypermodernity

*Guy B. Adams and Danny L. Balfour*

Globalization and hypermodernity have accelerated changes in organizational arrangements, such that networks, contracting, and cross-sector partnerships have become ubiquitous across all sectors. These, and other boundary blurring phenomena, have radically changed the context for organizational ethics. Both public service ethics and business ethics evolved largely as sector-specific fields, while nonprofit and nongovernmental organization (NGO) ethics, developing more slowly, borrowed from both. All three have treated ethics as focused primarily on the individual actor and as needing to be managed largely within the organization, although at least some attention to individuals in aggregates and to the organization's stakeholders has been included at times. Within a radically changed and evolving context, the questions for organizational ethics are now more complex and problematic. Both organizational culture and the culture at large seem centrally important in imagining a way forward for organizational ethics. With a myriad of dynamics at work—many apparently hostile to ethical action—and with multiple configurations of cross-sector relations, networks, and partnerships in many combinations, the question can become more basic: is there any way forward for organizational ethics in this context?

This chapter begins with a discussion of ethics and professional ethics and then turns to a brief treatment of business, nonprofit, and government versions of professional ethics. Across these three sector-specific ethical discourses (and

professional ethics more generally), we see a focus on the individual as the unit of analysis, as well as a sustained focus on compliance regimes—setting only ethical minimums, at best. We also discuss briefly the rather anemic literature contrasting business, nonprofit, and public sector ethics, and the even more rare work that begins to look across sectors.

This overview of organizational ethics in general and business, nonprofit, and government ethics more specifically presents a rather striking paradox. We see sustained attention in the literature to the development of various ethics regimes over at least the past forty years. These regimes have been put into practice in all three sectors, although one can question how thoroughly they have been implemented. At the same time, there appears to be a steady erosion of ethical behavior in organizations across all social sectors, at least in the United States. While no one would reasonably expect a perfect—or perhaps even a high-level—translation of theory into practice, one would not expect such a sustained academic discourse to be juxtaposed with a behavioral trend line moving in the *opposite* direction. How might this be understood?

We argue here that our thinking about organizational ethics has given insufficient attention to context—both organizationally and culturally. This leads us to a discussion of the culture at large, characterized in modern times by technical rationality. This cultural context relegates ethics to a secondary consideration and sometimes drives it out altogether. The acceleration of technical-rational conditions has led to what some theorists have aptly called “hypermodernity,” which we treat briefly. If anything, hypermodernity offers an even more hostile environment for ethics of all kinds. Next, we examine how this context has enabled a variety of boundary-blurring phenomena and changed many organizational arrangements. In general, people and organizations have more tenuous attachments to each other, creating an even more challenging context for organizational ethics, but perhaps also an opportunity to bring it back to the forefront.

After delineating an admittedly difficult context for organizational ethics, we next attempt to frame a way forward. Needing a conceptual framework that is able to simultaneously account for human action from culture to organization to individual, we discuss the concept of “appreciation” and appreciative systems, first articulated by Sir Geoffrey Vickers a half century ago. Next, we focus on how a more systemic and contextual approach can help us imagine how strong ethics cultures can be developed and sustained in organizations. We offer a typology of ethics cultures in organizations along the two dimensions of compliance and social responsibility as a useful frame to address some of the questions raised by a radically changed context. Finally, we must ask what realistic prospects there are for organizational ethics in a cultural context of hypermodernity. These prospects are difficult at best and

may even be diminishing. Still, we attempt to link the systemic and cultural dimensions of organizations and the culture at large. To begin, however, we turn to a discussion of ethics and professional ethics.

### **Ethics and Professional Ethics**

Ethics is the subfield within philosophy devoted to systematic thought about values, character, morals, and “right action.” For most of the modern age, two general approaches dominated Anglo-American philosophical thinking about ethics, namely *utilitarian* ethics and *deontological* ethics (Frankena 1973; Sandel 2009). Both approaches share an interest in determining the rules that should govern human action. Utilitarianism (Bentham 1789/1989) offers the overarching principle of the greatest good for the greatest number. Looking to the results or consequences of actions, utilitarian ethics elevates the ends over the means used to achieve those ends. Deontological ethics (Kant 1786/1959) reverses this emphasis, holding that following principles for right behavior takes precedence over the presumed outcomes or ends to be achieved. More recently, there has been a revival of virtue ethics (MacIntyre 1984), which focuses on moral character and has its roots in Plato and especially Aristotle (and a parallel, even older history in Chinese philosophy). For our purposes, it is important that all of these ethical traditions have focused on the individual as the relevant unit of analysis, as might be expected within Western culture, and especially in the United States with its tradition of pronounced individualism.

Business, nonprofit, and government ethics—as well as professional ethics more generally—in the Western tradition have drawn upon both utilitarian and deontological ethics, focusing on the individual’s decision-making process in the modern organization and as a member of a profession. In the public sector, deontological ethics are meant to safeguard the integrity of the organization by helping individuals conform to professional norms, avoid mistakes and misdeeds that violate the public trust (corruption, nepotism, etc.), and ensure that public officials in a constitutional republic are accountable through their elected representatives to the people. At the same time, those in public service are encouraged to pursue the greater good by implementing public policies while using discretion in the application of rules and regulations and creativity in the face of changing conditions (utilitarian ethics). The “good” organizational actor should avoid both the extremes of rule-bound behavior and undermining the rule of law with individual judgments and interests. These two approaches play out in a broadly similar fashion across all three sectors. Most people in organizations operate within an explicit and implicit mix of ethical orientations, with the balance often shifting from one situation to the next.

Virtue ethics, with its focus on moral character, has remained underdeveloped in professional ethics, especially if it is understood to be a social or communal, rather than just an individual, construct. Across all sectors, the various professions and their standards for performance and conduct often became the norm for ethical action. At the same time, professions were often blind to the limitations and destructive consequences of their actions, even as they were ostensibly “socializing” individuals into ethical and responsible professional practice (Adams 2001). We have written elsewhere (Adams and Balfour 2009) about the moral and ethical failings of professional ethics in the current cultural and organizational context, especially the tendency toward moral inversions and administrative evil. There has been little recognition of the most fundamental ethical challenge to the professional within a technical-rational culture: that is, one can be a “good” or responsible administrator or professional and at the same time commit or contribute to acts of administrative evil. As Harmon (1995) has argued, professional ethics in a technical-rational context has difficulty dealing with what Milgram (1974) termed the “agentic shift,” whereby the professional or manager acts responsibly toward the hierarchy of authority, the law, and the requirements of the job or profession while abdicating any personal, much less social, responsibility for the content or effects of decisions or actions.

### ***Business Ethics***

Business ethics has also largely been conceived and studied with a focus on the individual as the relevant unit of analysis, and as occurring primarily within an organization’s boundaries. DeGeorge (2005) notes three related strands in how business ethics has been understood. Like public service (or government) ethics, one strand of business ethics reflects attention within the academy going back at least to the decade of the 1970s. The second strand stems from the popular discourse on the succession of corporate scandals—really, this is ethics (or the lack thereof) in business. This strand also cuts across all professions and sectors. The final strand reflects the succession of (best) practices adopted within private sector organizations, including codes of ethics, and ethics officers, committees, and training. The first and the third strand have also included, at least for some, the notion of corporate social responsibility (Hurst 2004), a topic given greater attention everywhere else in the world—perhaps especially in Europe—than in the United States. As DeGeorge puts it (2005, 7), “In general, the European approach to business ethics has placed more emphasis on economics and on social structures, with less emphasis on the activities of corporations as such, than the U.S. approach does.” Hasnas (1998) describes the three leading normative theories of business ethics as



stockholder theory, stakeholder theory, and social contract theory. Stockholder theory, which basically suggests that business has a fiduciary responsibility to its stockholders, simply conflates ethics and profit-making. Stakeholder theory enlarges the scope to some extent, although many have failed to include stakeholders beyond those whose interests relate to that same bottom line. Social contract theory includes thinking about corporate social responsibility (Garriga and Mele 2004).

Business ethics has certainly had its critics. Aasland (2004) describes business ethics as primarily about “being seen to be ethical,” rather than actually being ethical and behaving ethically. Marens (2011) characterizes business ethics as “speaking platitudes to power.” Vogel (2005, 17) extends such criticism even to corporate social responsibility: “Companies are either using corporate responsibility as a way of gaining competitive advantage or as a way to avoid a competitive disadvantage.”

Business ethics shares another trait with public service ethics. Both have focused largely on compliance regimes, which essentially set a floor below which it is hoped no one will descend. Kim Cameron (2006, 318) nicely states the essential shortcoming of this approach: “The problem is standards that avoid harm are not the same as standards that lead to doing good.” Arguably, mainstream approaches to professional ethics of all kinds have set a very low bar for ethical action—merely to avoid violating minimalist rules, especially breaking the law.

### *Nonprofit Ethics*

At least some of the differences in thinking about ethics within the nonprofit sector have to do with the nature of the sector itself. It is based neither on market principles, as the private sector has been, nor on constitutional principles, as the public sector has been. Rather, the nonprofit sector can be described as mission-driven (Schultz 2004). A further difference is that the nonprofit sector has relied historically on volunteers and has been characterized as a “gift economy.” Among the values characteristic of the nonprofit sector, according to Schultz (2004, 286) are sympathy, virtue, compassion, and voluntarism (see also Rothschild and Milofsky 2006). There has been some attention given specifically to NGOs within the nonprofit sector (Choi et al. 2005). The Ethics Resource Center (a well-established research center near Washington, DC), in its first national survey of the nonprofit sector (2007), noted a number of differences and similarities between the private and public sectors: (1) nonprofit organizations have, on average, stronger ethics cultures and greater alignment of employees’ personal values with the missions and values of their organizations; (2) nonprofit employees experience less retali-

ation when they report misconduct; (3) rates of misconduct are similar in all three sectors; (4) financial fraud is more prevalent in the nonprofit sector; and (5) nonprofit boards are not as proactive in fostering an ethics culture as they perhaps should be.

There has been some study of overlapping values between the sectors. In one such study, van der Wal, de Graaf, and Lasthuizen (2008, 478) found that the private and public sectors both valued accountability, expertise, reliability, effectiveness, and efficiency. In another study, Malloy and Agarwal (2010, 15) found that both the public and nonprofit sectors valued caring very highly. Blurring between the sectors has not gone entirely unnoticed in the ethics literature. Phillips (2010, 534–535) notes several phenomena that arise from an economy characterized by ubiquitous networks, with the following chief among these: “The diffusion of responsibility is perhaps the defining challenge of organizational ethics.” He goes on to note that organizations of all kinds now have an enhanced level of what one might call “plausible deniability,” including three types: knowledge denial (we didn’t know); control denial (we knew, but we couldn’t do anything about it); and connection denial (whether we knew or not, it’s another organization’s problem). Phillips then suggests that “deniability networks” represent a very promising area of research, because this is how organizations of all kinds can externalize responsibility. With this overview of professional ethics, we turn now to how ethics regimes have manifested in organizations.

### **The Paradoxical Disconnection Between Theory and Action in Ethics**

The Ethics Resource Center (ERC) has conducted several national surveys regarding business ethics, including the most recent in 2009. It has also conducted similar national surveys for government ethics (2008) and nonprofit ethics (2007), providing useful comparative data for the United States. The results of the government ethics survey (ERC 2008, viii) indicated that while overtly illegal acts are rarely observed, unethical behavior was widespread and largely unreported within organizations at all levels of government, with nearly six in ten government employees having seen an unethical act in the past twelve months. This finding for the public sector was actually marginally worse than the private sector survey results from 2009 (ERC 2009a), in which less than half of the employees saw misconduct. The most recent business ethics survey (2009b) noted that the severe economic downturn had actually resulted in an improved ethical climate—noted as consistent with results during previous recessions and also as a temporary phenomenon, likely to trend back downward as the economy recovers (as it has in the past). These

surveys, taken together, follow in the wake of high-profile ethical debacles in the United States since 2000 in all three sectors—from Enron to Katrina to United Way to Abu Ghraib and Blackwater—events that eroded the public’s trust in organizations (Adams and Balfour 2010). With sustained attention within the academy to public service, nonprofit, and business ethics for at least the past forty years, and the concomitant growth of ethics programs—albeit in fits and starts—in all three sectors, there appears to be a major disconnection between theory, on the one hand, and human actions across organizations in all social sectors, on the other hand.

This disconnection between theory and action arises in considerable part from failing to consider adequately the cultural and organizational contexts within which those in organizations produce ethical or unethical actions. In some respects, a disconnection between theory and practice is predictable, because the culture at large—and the way in which it conditions our assumptions and understandings of organizational life in particular—sets the “range of the possible” for the actions of people in all three sectors (Hofstede and Hofstede 2005). One is tempted to describe the situation of public service, nonprofit, and business ethics as a structural conundrum. That is, powerful, long-standing, but largely unseen assumptions and values are at work both in organizations and in the culture at large that simultaneously enable some ethical and unethical actions and constrain others. These appear to operate independently of intraorganizational phenomena, while remaining unseen and unstudied by those who work in the area of professional ethics.

As both Heclo (2008) and Stiglitz (2010) have argued, the ascendancy of the market state over the past thirty years at least has undermined the trustworthiness of social, political, and economic (cultural) institutions and organizations. Discussing the financial meltdown of 2007–2008, Stiglitz points out the damage not only to the economy, but also to society more broadly as a result of pervasive breaches of trust (2010, 275–276):

We have gone too far down an alternative path—creating a society in which materialism dominates moral commitment, in which the rapid growth that we have achieved is not sustainable environmentally or socially, in which we do not act together as a community to address our common needs, partly because rugged individualism and market fundamentalism have eroded any sense of community and have led to rampant exploitation of unwary and unprotected individuals and to an increasing social divide. There has been an erosion of trust—and not just in our financial institutions.

Indeed, we appear to be entrenched in a vicious, self-sealing cycle: as institutions and organizations become increasingly corrupt and venal, the

more people mistrust and expect the worst from them. Organizations and institutions become the last place that individuals look to for the nurturing of values; individuals instead see them as settings in which only the foolish or stubborn act with high ethical standards (Callahan 2004). Consider the list—only partial—of individual corporate scandals provided by Heclo (2008, 15): Adelphia, AIG, Cendant, Global Crossings, Tyco, Phar-More, HealthSouth, Waste Management, WorldCom, and, leading the way, Enron. Heclo goes on to list categories of corporate misconduct: savings and loan institutions, junk bonds, BCCI money laundering, mutual funds, public accounting firms, and investment banks. For the public sector, Heclo (17–21) presents a long table of thirty-nine scandals in the United States stretching from 1958 (acceptance of bribes in the form of gifts by Sherman Adams, President Eisenhower's chief of staff) to 1999 (President Clinton's impeachment after lying to cover up an affair with a White House intern). A list nearly as long could be constructed just for the decade since. Of course, the nonprofit sector has hardly been immune to such scandals. Heclo characterizes the situation as a "double bind" (167):

On the one hand, all things institutional carry the stigma associated with the bureaucratic-rationalized-organizational way of living through which the whole system operates. We experience "the institutional" as personally stultifying. On the other hand, the same economic system caters to and constantly teaches a short-term, self-centered ethic of personal gratification. This view is incessantly marketed as the standard by which to judge what is personally fulfilling, thus working against institutional thinking from the other end.

This ongoing, progressive erosion of trust in institutions and organizations has sent a different and unfortunate signal around the globe, according to Stiglitz (2010, 225–226):

Faith in democracy is another victim. In the developing world people look at Washington and see a system of government that allowed Wall Street to write self-serving rules, which put at risk the entire global economy, and then when the day of reckoning came, Washington turned to those from Wall Street and their cronies to manage the recovery—in ways that gave Wall Street amounts of money that are beyond the wildest dreams of the most corrupt in the developing world. They see corruption American-style as perhaps more sophisticated—bags of money don't change hands in dark corners—but just as nefarious. . . . They see, in short, a fundamental problem of political accountability in the American system of democracy.

While we might prefer a cultural context that would foster and sustain ethical behavior, instead it appears to undermine in a rather thoroughgoing way forty years of sustained attention to organizational ethics. A closer examination of the cultural and organizational context is a fruitful next step for this discussion.

### **The Missing Dimension of the Cultural Context**

Nonprofit, government, and business ethics follows largely from the cultural context of our time. The cultural context in the United States (and increasingly globally) during the modern age can be characterized as technical rationality—that is, a way of thinking and a way of living that exalts the scientific-analytical mind-set and a belief in technological progress (Vanderburg 2005). Donald Schon (1983, 21) and others have argued that technical rationality has been the most powerful influence on how we think about both the professions and the institutional relations of society, government, and business. Technical rationality emerged in full form in the twentieth century, and it continues in the twenty-first as the central pillar within the mental map of globalization. Technical rationality underpins globalization and economic rationalism, which in turn have energized and sustained a myriad of boundary-blurring phenomena. One author has described technical rationality as the first universal human culture (Vanderburg 1985; see also Barrett 1979; Bauman 1989; Ellul 1954; Ritzer 2004; and Vanderburg 2005).

How does technical rationality's combination of the scientific-analytic mind-set and the concomitant belief in technological progress shape our culture? The scientific-analytic mind-set has come to characterize—and ultimately define—rationality, resulting in a narrowing of the concept of human reason and the devaluing of other sources and processes previously thought to develop knowledge. The closely connected belief in technological progress is essentially both a fascination and a faith in each successive technological advance—and the typically unquestioned assumption that each new technology is in fact an advance. Both individual and social problems are thought to be fixable by a (new) technique or technology. These twin assumptions are reinforced within a self-sealing way of thinking and way of living that simultaneously produces the outcomes that are made inevitable by the prior assumptions.

For a time, many thought that modernity had been superseded by the postmodern condition. More recently, however, astute theorists have noted the persistence of modernity and technical rationality, but with a vengeance. Various authors have termed these latest developments as hypermodernity (Charles 2009), supermodernity (Auge 1995), and liquid modernity (Bauman 2005), all of which share in common what Portillo and Costa (2010,

482) call “technical fundamentalism.” Charles offers this characterization of hypermodernity (2009, 392):

Hypermodernity thus amounts to a *radical* modernity characterized by the exacerbation and intensification of that modern logic by which human rights and democracy have been made into mandatory values, by the market having become a global economic reference system reaching into the remotest places on the planet and invading every sphere of our existence, and by science as an only partly controllable instrument that now throws even the notion of humanity itself into question by opening the possibility of human cloning.

The escalation of instability, of velocity, of excess, of change in hypermodernity led Zygmunt Bauman (2005) to use the term “liquid modernity” (see also Bryant, 2007). As Bauman (2005, 95) says:

Transience had replaced durability at the top of the value table. What is valued today (by choice as much as by unchosen necessity) is the ability to be on the move, to travel light and at short notice. Power is measured by the speed with which responsibilities can be escaped. Who accelerates wins; who stays put, loses.

Paul Virilio (1977/2006), the French cultural theorist, refers to these phenomena collectively as the “empire of speed.”

Thus, today’s organizations are largely creatures of hypermodernity and the acceleration of technical rationality. Within organizations, technical rationality has led to task and knowledge specialization, the successive application of the “latest, most up-to-date” technique (including machines, information systems, and/or management schemes), and an inhospitable context for ethics and morality. As both MacIntyre (1984) and Poole (1991) have argued, modernity has produced a way of thinking—an epistemology—that renders moral reasoning necessary but superfluous. Yiannis Gabriel characterizes contemporary organizations as a “glass cage” (2005, 314):

Unlike an iron cage, which frustrates all attempts at escape with its brutish and inflexible force, a glass cage is discreet, unobtrusive, at times even invisible—it seeks to hide the reality of entrapment rather than display it, always inviting the idea or the fantasy that it may be breached, even if at the cost of serious potential injury. The image of such a cage suggests that it may not be a cage at all, but a wrapping box, a glass palace, a container aimed at highlighting the uniqueness of what it contains rather than constraining or oppressing it. Glass, then, is a medium perfectly suited to a society of spectacle, just as steel was perfectly suited to a society of mechanism.

### **Blurred Boundaries, Ubiquitous Networks, and Hypermodernity**

A key consequence of hypermodernity and the acceleration of technical rationality is that individuals are less and less tied to the traditional moorings of organization, community, and nation that once nurtured and protected them, although these moorings had already loosened considerably in the last century. For some, this represents an opportunity to explore new horizons and possibilities. Many others, however, find themselves adrift in a world that offers no safe haven in which to land and settle into a stable life. At the extreme end of this spectrum are millions of refugees—termed “surplus” populations by one author (Rubenstein 1975). The dimensions of this problem are such that no nation or community remains untouched by it (Fritz 1999, 5):

An estimated 50 million people were either driven from their countries or uprooted within them by the mid-1990s, roughly one out of every hundred people on earth. Counting those who emigrated for what were viewed as dire economic reasons, the figure more than doubles. The impact of this great migration has been enormous. It has compelled U.S.-led armies to intervene in faraway wars. It has led to a reactionary wave of restrictive immigration laws around the world. And it has planted the seeds of countless future conflicts.

These trends have obviously only escalated in the years since Fritz wrote. Each new refugee crisis challenges already overstressed nation-states and nongovernmental organizations to find ways to absorb and care for these people with limited resources within an increasingly unsupportive political and social environment, as is evident more recently by the 1 million Iraqis internally displaced within their country and the 2 million more Iraqis living outside of their country, driven from their homes first by the vicious dictator Saddam Hussein, then by the subsequent American occupation, and now by a corrupt successor regime in Iraq (Brookings Institution 2008).

On another level, millions more individuals feel threatened by the sheer velocity of the forces of globalization, fearful that they too will be uprooted and left hanging without a safety net—the so-called anxious class (Reich 2007). People feel threatened by the rapid changes and painful dislocations caused by unseen and poorly understood global forces. They fear that their jobs, communities, or workplaces can be changed or even taken away at any moment by anonymous and fast-moving economic, political, and technological forces. A new technology can transform an industry in a matter of months, making an individual's skills obsolete, or one's organization can disappear



overnight in a new wave of mergers or relocation to another country. The mass of refugees and of the “anxious class” throughout the world serve as a constant reminder of how individuals, communities, regions, and even nation-states can be made superfluous by the sheer velocity of globalization and hypermodernity (Peck 2011).

Organizations themselves are changing in many instances under similar pressures. Some of these changes have great impact on workers (Sennett 1998, 2005). Workers and even entrepreneurs who achieve success in this new global environment may also suffer from deep anxieties about the future and the quality of their lives—anxieties that have turned all too real for many thousands of people like them in the successive waves of market “rationalization.” One result of this dramatic alteration of the “psychological contract” between workers and organizations is declining levels of trust and commitment, as we have already noted (Rousseau 1995). For managers and policy-makers, workers are increasingly considered expendable. The notion that organizations should care for their employees or make long-term commitments to them is seen as an anachronism. The short-term orientation of the global market tends to undermine further moral character, especially those qualities that bind people to each other and furnish the individual with a stable sense of self (Callahan 2004).

Under these conditions, the “rules of the road” in organizations make the grounds for ethical behavior even more uncertain. Contemporary organizations emphasize flexibility and autonomous action. Corporations, nonprofits, and governments want employees who can think on their feet and adroitly adjust to rapid change, but also want to retain the right (in the name of adaptability to global market imperatives) to terminate these employees at any time for the good of the organization. More flexibility has really meant less freedom for employees. The threat of expendability and fear of social breakdown make people all the more prone to protect their self-interest rather than consider the implications of their actions for the well-being of others. The era of hypermodernity poses substantial ethical challenges for public, nonprofit, and private organizations, suggesting new lines of inquiry that transcend the focus on individual ethical behavior and take into account the interconnectedness and shared responsibility of organizations, as well as the cultural context.

### **Framing a Way Forward: The Concept of Appreciation**

Nearly a half century ago, Geoffrey Vickers developed a particularly illuminating way of describing how human cultures are enacted and sustained over time, using the concept of “appreciation” to articulate these dynamics. For Vickers (1965/1995), appreciation is an inherent and essential part of human

thought and action from the level of individual consciousness to that of human cultures. The exercise of appreciation has three interactive and interrelated components. The first is the making of reality judgments: that is, what is or is not the case—ranging from basic cause-and-effect beliefs to more subtle and complex “facts.” The second component is the making of value judgments: what ought or ought not to be the case—including imperatives, wants and desires, prudential or self-interested considerations, and individual and collective values and norms. The third is the making of instrumental judgments: what are the best means available to reduce the mismatch between is and ought—including the personal resources of time, attention, thought, and power, along with those social resources that can be directed and applied (by influence or command) through communication, cooperation, and access to social institutions.

Along with being a single mental activity comprised of three interrelated but distinct forms of judgment, appreciation is always partly tacit (see Polanyi 1966). That is, human judgment cannot be fully described in explicit or analytic terms. The scientific-analytic mind-set has difficulty with the construction of human thought as anything short of fully describable, with the result that both valuative and tacit dimensions are often omitted entirely or simply assumed as givens. The inclusion of the epistemological and ethical along with the instrumental within the single activity of appreciation is the key insight here. Scientific-analytic treatments of judgment and decision-making in the social sciences typically address only the instrumental (with epistemological and ethical judgments treated merely as givens). For Vickers, human action (as distinct from reaction, instinct, or reflex) inextricably entails all three forms of judgment; it is a product of judging what is, what ought to be, and what can be done to reduce the difference between the two.

It is through appreciation, then, that humans locate themselves, find meaning, and seek to maintain stability within what Vickers (1964, 477) calls the “self-spun web” of culture that constitutes our distinctly human home

the sanest like the maddest of us cling like spiders to a self-spun web, obscurely moored in vacancy and fiercely shaken by the winds of change. Yet this frail web, through which many see only the void, is the one enduring artifact, the one authentic signature of humankind, and its weaving is our prime responsibility.

Appreciation thus lies at the heart of human experience from the level of individual consciousness through organizations to the level of culture.

Appreciative systems are essential to most human activities and capacities, including the ability to discriminate figure from ground, signal from noise;

the ability to create and alter organized patterns with subtlety; and the ability to harmonize ideas and mute dissonance. These are not simply subjective processes that occur only within an individual's head; they are relational, intersubjective processes that involve communicative interaction with other people. Arguably, the relational and intersubjective may be prior to and constitutive of the individual (turning the conventional understanding of American culture, which gives primacy to the individual, rather neatly on its head).

Appreciation is also how one locates oneself within the natural and human worlds by finding meaning in them. Cultures are constituted by the manifold, communicative interaction of people who share sets of meaning attached to those worlds and who act on them through self and mutual expectations. Linking us to the world and to each other, such expectations are built up through our experiences and constitute the norms against which we individually and collectively determine what ought to be and by which we recognize what is deviant. Norms—expressions of values—thus constitute the basic regulators of society, yet they are constantly adapted and modified under the influence of the very activities they mediate. This interrelated scheme of values and norms and appreciative judgments constitutes an appreciative system, whether in the norms of a culture, in the ethos of an organization, or in the mind of an individual. Thus, appreciation and appreciative systems provide a framework for imagining a richer and fuller organizational and cultural context.

### **Fostering Strong Organizational Ethics**

Organizational ethics, as appreciative systems, expand the boundaries of rationality along dimensions that link the strands of what is (factual), ought to be (normative), and how to get there (instrumental). The first and most basic level—mainly deontological in nature—is *compliance*, conforming to legal and regulatory requirements. Offices of corporate compliance, which emerged following the business scandals of the 1980s, are sometimes criticized for focusing too much on the letter of the law, but they at least provide some minimal standard for ethical behavior. Compliance has been the focus of virtually all government and nonprofit ethics programs as well. It can be helpful, but is far from sufficient, especially in the radically changed context of hypermodernity.

*Social responsibility* moves ethical considerations beyond compliance and in a utilitarian direction by focusing on fulfilling obligations to the organization's stakeholders very broadly construed. Stakeholders may include employees, unions, consumers, suppliers, neighborhoods near production facilities, the natural environment, firms of outsourced functions and their employees, future generations, and more. Advocates of social responsibility

argue that organizations must craft their strategies and product lines in relation to the interests of this greater population of stakeholders.

Social responsibility builds on the increased attention given—far more outside the United States—to the concept of *corporate social responsibility*, placing an emphasis on both the organizational and cultural contexts that have been the key missing links in understanding and fostering ethical behavior. Here the focus is on the organization's obligations to its community—broadly construed—in the form of community-building and charitable activities, economic development, and protecting the natural environment, among other considerations. At this level, organizations are expected not only to consider stakeholder values when making strategic decisions, but also to consciously adopt ethics and values as part of their core identity. This is a hallmark of a “well implemented” organizational ethics program (ERC 2008, 39). Social responsibility entails a tacit contract between an organization and its host community, in which both recognize the costs and benefits of doing business within a jurisdiction and the expectations a community has for an organization to give back to the community by helping to make it a better place to live and work, rather than merely using it as a source of cheap labor or a dumping ground for industrial waste (*Economist* 2008). This perspective has encouraged some organizations to adopt a “triple bottom line”—financial, social, and environmental—and to focus not just on legal obligations but on what is ethical and responsible to the broader, even global, community of which it is a member (McBarnet 2004).

The notion of social responsibility for organizations is appealing and has provided some promise for creating more ethical organizations (*Economist* 2008). However, the varying degrees of organizational ethics and responsibility suggest that organizations differ in their stages or categories of ethical development and behavior and that achieving a well-developed organizational ethics culture is a considerable challenge. Figure 12.1 depicts four types of ethical situations based on the intersection of compliance and social responsibility. For example, an organization that is high in both compliance and social responsibility would likely be considered an ethical organization. By contrast, an organization that is low on compliance and social responsibility is at least unethical and may even merit classification as a criminal organization. Enron provides one of the most striking examples of an organization that broke laws, violated regulations, and damaged communities and the natural environment, despite being one of the first companies to issue a “triple bottom line” report (Reich 2007, 174) and despite touting its ethics program as an industry leader. An organization that is low in compliance and high in social responsibility may be classified as ineffective, either lacking access to markets or the expertise to comply with complex regulations.

Figure 12.1 **Typology of Organizational Ethics**

		<b>Social responsibility</b>	
		High	Low
<b>Compliance</b>	High	Ethical organization	“Masked” organization
	Low	Ineffective organization	Criminal organization

Achieving social responsibility is made more difficult by the possibility that an organization may be both high in compliance and low in social responsibility, a situation that can be referred to as “masked” in that the organization (and its affiliated organizations) may not be aware of the unethical and even destructive consequences of organizational action even as they may be quite successful in the marketplace and complying with the letter of the law. Recall here Phillips’s (2010) three kinds of “plausible deniability”—knowledge, control, and connection denial. Masked ethical failures can occur in more than one way. An organization can be in compliance with all relevant laws and regulations while its actions harm one or more stakeholder groups. Or an organization can be legally compliant while operating in a nation that violates human rights and/or allows environmental degradation in order to achieve economic goals. Finally, an organization may follow the rules while facilitating irresponsible behavior by other organizations with which it is affiliated through contracts, outsourcing, off-shoring, suppliers, and customers.

The road from compliance-based ethics programs to comprehensive ethics programs that are high on both compliance and social responsibility is a difficult one. A compliance-based organizational ethics program should include (1) written standards for ethical conduct, (2) a mechanism for reporting misconduct anonymously, (3) discipline for employees who violate the standards of the organization or the law, (4) training on company standards of ethical workplace conduct, (5) a mechanism for seeking ethics-related advice or information, and (6) assessment of ethical conduct as a part of employee performance evaluations (ERC 2007, 20).

Figure 12.2 **Connecting Ethics at the Organizational and Cultural Levels: An Appreciative System**

Types of Ethics	Level	
	Organizational	Cultural
	Deontological <ul style="list-style-type: none"> <li>Compliance               <ul style="list-style-type: none"> <li>• Ameliorating corruption</li> <li>• Promoting transparency</li> </ul> </li> <li>Obligations               <ul style="list-style-type: none"> <li>• Standards for ethical organizations (resources, staffing, training)</li> </ul> </li> </ul>	Network/Collaborative ethics <ul style="list-style-type: none"> <li>• Overcoming “deniability”</li> </ul> Collaborative ethics <ul style="list-style-type: none"> <li>• Fit and flexibility</li> </ul>
	Utilitarian <ul style="list-style-type: none"> <li>Understanding and achieving stakeholder responsibility broadly construed</li> </ul>	Social and environmental sustainability
Virtue	Building strong ethics cultures in organizations  How can organizations move from masked or ineffective to an ethical culture?	Sustainable, responsible social institutions  What, if any, progress does hypermodernity admit?

The Ethics Resource Center advocates moving beyond compliance programs to a systemwide cultural approach to organizational ethics. In addition to the six compliance dimensions mentioned above, building an ethical organizational culture requires substantial progress along four dimensions: ethical leadership, supervisor reinforcement, peer commitment to ethics, and embedded ethical values (ERC 2007, 20, 24). A well-developed organizational ethics culture along these four dimensions is rare, because it takes sustained effort over a period of years to make it “second nature” throughout the organization. Unfortunately, an ethics culture within an organization can be undermined and even destroyed in a much shorter time—even by a single act.

Social responsibility, while certainly consistent with an ethical organizational culture, requires going well beyond the organization’s boundaries to include social, community, and/or environmental considerations, as discussed above. Figure 12.2 connects ethics at the organizational and cultural levels and suggests the dissonance between them, which may well thwart real gains in organizational ethics.

One can imagine virtue ethics as the underpinning for an appreciative system linking the cultural, the organizational, and the individual within an

interactive, dynamic ethics culture (that would include deontological and utilitarian dimensions as well). The problem, however, is not with our imaginations. Rather, the problem is partly the limits we have placed on our imagination through our focus on the individual as the unit of analysis and through the unseen constraints imposed by our own participation and socialization in a culture of technical rationality, now accelerated in hypermodernity. Thus, both strong ethics cultures in organizations and social responsibility go against the grain of approaches to professional ethics with the individual as the unit of analysis, and against the grain of hypermodernity and all the boundary-blurring changes it has engendered. Arguably, the market state, globalization, and economic rationality—now accelerated into hypermodernity—have made it considerably more difficult to achieve the ethical organization, one that complies with the law, meets its organizational obligations, and behaves responsibly to both society and the environment.

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## Ethical Challenges in Nonprofit Organizations

### Maintaining Public Trust

*Kevin P. Kearns*

The ethical challenges faced by private nonprofit organizations (NPOs) are shaped, to a large extent, by the distinctive role they play in society (Anheier 2009). NPOs are hybrids between government and business. They produce public goods and services that contribute to the general welfare of society, yet they pursue their missions with private resources, often in a competitive environment. Some NPOs are purely charitable but others less so. In fact, some NPOs are actually highly profitable. The most visible NPOs are sophisticated corporate giants, commanding vast sums of money and expertise, but most are quite small, with only a few employees and tiny budgets. Moreover, the nonprofit sector in the United States is relatively unregulated and is likely to remain so for the foreseeable future. Consequently, transparency in the nonprofit sector is relatively low, especially in comparison with most government organizations and even in comparison with some business enterprises.

Despite the diversity among NPOs, there is one thing that they have in common—*public trust* is their most valuable asset. Without public trust, nearly every other resource that a nonprofit organization uses to advance its mission will be jeopardized. Donors will stop making charitable contributions. Government agencies will stop awarding service contracts. Volunteers will stop contributing their time and effort. Politicians will withhold their support and political capital. And eventually clients, consumers, members, and patrons will seek other NPOs to serve their needs. With redundancies in

many nonprofit industries, they will not need to look far for alternatives. But maintaining public trust is not easy, especially in contexts where the general public harbors many misunderstandings about the nonprofit sector and its role in society.

In this chapter we explore some of the external and internal forces that exert influence over NPOs as they pursue their many and varied missions. These forces, in turn, provide a set of lenses that can be used to reveal and diagnose various types of ethical challenges faced by NPOs, particularly with regard to the ethical concept of trust. It is argued here that the ability to anticipate these ethical challenges, not just react to them, opens the door for strategic planning discussions that include ethical scenarios, thereby improving the organization's ability to make proper choices when ethical challenges present themselves.

### **What *Is* the Nonprofit Sector?**

When trying to describe the nonprofit sector, one is reminded of the proverb about the blind man trying to describe an elephant. By touching parts of it he will get a partially accurate impression, but he will never have the complete picture. Such is the case with the nonprofit sector. Even those of us who have spent a lifetime studying and working in NPOs often quip to each other, "If you have seen one nonprofit, you have seen *one* nonprofit."

NPOs in the United States and in many other countries are hybrid organizations, which makes them difficult to characterize. On the one hand, NPOs resemble government agencies because they provide programs and services, such as education, health care, social services, artistic and cultural enrichment, scientific research, youth services, and programs for the elderly, that ostensibly contribute to the general public welfare. In recognition of their public service missions, most NPOs in the United States receive some type of government financial support, either through the indirect subsidy of preferential tax treatment or directly through contractual reimbursements for goods and services.

On the other hand, nearly all NPOs are, at least to some extent, commercial enterprises. In terms of financing, management, and governance they resemble business enterprises more than government agencies. For example, NPOs have no guaranteed source of income such as tax revenues. Rather, their revenues typically are a dynamic and sometimes fragile mixture of charitable contributions from individuals or businesses, grants and contracts from foundations or government agencies, and various types of earned income derived from the sale of goods and services to clients. Over the past few decades, earned income has been a fast-growing and increasingly significant source of rev-

venue for many types of NPOs, including social service agencies (Blackwood, Wing, and Pollak 2008).

The point is that none of these funding streams can be counted on from year to year. Rather, NPOs must develop revenue strategies as part of their annual business plan to ensure that they will have resources sufficient to support their missions. When seeking income or other essential resources, NPOs must “sell” or legitimize themselves in the eyes of the public, usually in competition with other NPOs that are vying for the same finite resources. Thus symphony orchestras compete with opera companies, theater troupes, and other high-culture entertainment venues. Hospitals compete with each other for patient loyalty, for the best doctors and other medical staff, and sometimes for research grants from government agencies like the National Institutes of Health. Even homeless shelters and soup kitchens compete with other NPOs for their share of public attention, volunteer resources, and charitable contributions.

Management and governance mechanisms in NPOs also are more like those in businesses than in government. The top management of any nonprofit organization is chosen and evaluated by its board of directors (or trustees), and there is a symbiotic relationship between the executive staff and the board that is analogous to the board-staff relationship in the business world. True, the board of any NPO is legally bound to make decisions in an impartial way and to avoid conflicts of interest. But most policy decisions in NPOs take place behind closed doors and without significant public oversight, transparency, or even visibility.

The hybrid nature of NPOs creates confusion that sometimes extends even to the nomenclature we use to label the sector (Salamon 1999):

- *Nonprofit sector:* This title conveys the false impression that NPOs are forbidden, legally or morally, from generating profits. In fact, at least in the United States, charitable organizations can indeed generate profits, but they cannot distribute those profits to individuals. Rather, they must reinvest profits into the charitable mission of the organization.
- *Charitable sector:* This name implies that nonprofit services are provided free of charge and that most of the income for NPOs is derived from charitable contributions. In fact, many organizations that are designated as charitable entities derive substantial revenues from fees for service such as tuition, ticket sales, membership dues, royalties, and other earned income sources.
- *Voluntary sector:* This name creates the false impression that the nonprofit sector is staffed primarily by volunteers. It is true that most states and



the Internal Revenue Service generally require a significant amount of voluntary effort in return for the nonprofit tax exemption, but the daily activities and programs of NPOs are undertaken by trained professionals who have specialized skills and credentials and who rightly demand fair compensation for their efforts.

- *Third sector or “independent” sector:* This title contributes to the inaccurate notion that all NPOs operate independently of government and business. In fact, many NPOs, especially those that contract extensively with government, operate very much like quasi-governmental agencies (Smith and Lipsky 1993), and the boundaries that separate the three major sectors of our economy—nonprofit, government, and business—have become increasingly blurred. Today, for-profit businesses are active in industries like health care, higher education, job training, child care, juvenile and adult detention, and many other domains formerly dominated by government or nonprofit providers. Conversely, some NPOs have spun off sophisticated for-profit subsidiaries to generate income while also advancing their mission.

Finally, we must acknowledge that the nonprofit sector is remarkably asymmetrical in terms of size, public visibility, and political influence. The dominant organizations are nonprofit hospitals, universities, and a few of the national federations like the United Way and the Red Cross. These large organizations, while constituting a very small percentage of the 1.5 million NPOs in the nation, hold a disproportionate share of nonprofit assets and command the highest visibility and political influence. Their top executives have lucrative compensation packages and their boards of directors are composed of elites, many of whom are intricately interlocked through their joint membership in clubs, churches, and governance boards of other organizations. The business models and strategies of these large NPOs are enormously complex, rivaling anything seen on Wall Street and often producing confusion and distrust among stakeholders (see Exhibit 13.1).

While the large nonprofit institutions dominate the headlines, the vast majority are actually quite small, with annual budgets under \$500,000 and only a handful of full-time paid employees. They are the equivalent of small businesses, and their visibility and influence beyond the neighborhoods they serve is negligible. They operate largely below the radar of public consciousness, quietly pursuing niche missions and serving small populations.

In recent years, the reporting requirements of NPOs have become a bit more stringent and public access to nonprofit finances and governance activities has increased. For example, most NPOs must annually file, and make publicly available, a report (IRS Form 990) that documents their income sources, the

### Exhibit 13.1 **Regional Health-Care Competition: Commercialization Run Amok?**

The website for the University of Pittsburgh Medical Center (UPMC) states that it is a "\$9 billion global health enterprise . . . integrating more than 20 hospitals, 400 doctors' offices and outpatient services, a health insurance services division, and international and commercial services." Significantly, UPMC is a fully autonomous organization with only an affiliate relationship with the University of Pittsburgh—a relationship that creates confusion even in Pittsburgh. With 54,000 employees, UPMC is the largest employer in southwestern Pennsylvania. Its executive offices and a massive corporate logo dominate a sixty-story office tower in downtown Pittsburgh that once was home to the U.S. Steel Corporation—an ironic testament to how much Pittsburgh's economy has changed in the past thirty years, evolving from a steel manufacturing center to an economy centered on health care, financial services, and higher education. In 2010 UPMC reported net income (essentially profit) of more than \$400 million, yet it is chartered as a tax-exempt charitable organization by Pennsylvania's Department of State and classified as a 501c3 tax-exempt entity by the U.S. Internal Revenue Service.

As a corporate entity, UPMC has been wildly successful both financially and with respect to the quality of its health-care services. Yet it also has weathered a variety of political and public relations storms. For example, since the early 1990s elected officials in Pittsburgh have tried in vain to either tax the vast land holdings of UPMC or extract higher voluntary payments in lieu of taxes (PILOTs) to help support the fiscally distressed municipal government. Moreover, the salary of UPMC's chief executive officer has been widely criticized as excessive for a nonprofit entity, regardless of its size and economic clout. Most significantly, UPMC has been criticized for its aggressive competitive strategy of vertical integration, resulting in massive growth and a diminished market share for other hospital systems in the region. One competing hospital system even challenged (unsuccessfully) UPMC's growth strategy as a violation of antitrust laws.

In 2011 a specific competitive decision by UPMC's leadership produced a firestorm of public criticism. The organization broke off negotiations for a renewed service contract with Highmark, a Blue Cross and Blue Shield affiliate and one of the nation's largest health insurers. If the contract is not renewed, Highmark customers soon will pay a significant out-of-network penalty if they wish to utilize UPMC's outstanding medical facilities and doctors. Critics have claimed that UPMC is attempting to force consumers to switch to its own for-profit health insurance subsidiary, the UPMC Health Plan. UPMC, on the other hand, argues that Highmark has purchased a controlling interest in a competing health system and that Highmark would essentially use its contract with UPMC to finance UPMC's major rival. UPMC spokespersons have dubbed this "unfair competition," a term met with skepticism in some quarters and outright scorn in others.

The controversy gained momentum as the expiration of the contract neared. The major local newspaper repeatedly criticized both parties, but especially UPMC, for pursuing a competitive strategy that may reduce access to quality health-care for thousands of citizens. Some observers have raised ethical considerations, accusing UPMC of violating the spirit, if not the letter, of its nonprofit

*(continued)*

Exhibit 13.1 (*continued*)

charter. Because UPMC controls some of the region's best specialty hospitals (e.g., Hillman Cancer Institute), many Highmark customers with special health needs will face either limited choices or more expensive services. The Pennsylvania legislature has discussed legal options to force UPMC and Highmark back to the bargaining table, thus far with no success (Hamill and Silver 2011). Consumers, politicians, employees, volunteers, and donors are saying that it is "simply wrong," even if it is not illegal, for a nonprofit entity to behave so much like a for-profit corporation.

Is UPMC's strategy ethically wrong, or is it merely exercising proper stewardship over its vast charitable assets in an extremely volatile and competitive industry?

salaries paid to top executives, program goals and objectives, expenditures on these programs, and other types of performance data designed to enhance transparency and accountability. These are positive developments. Nonetheless, regulatory oversight of the sector remains relatively benign and enforcement mechanisms at all levels of government—federal, state, and local—are paltry in comparison to the massive task of keeping tabs on more than 1.5 million NPOs nationwide (Bottiglieri, Kroleski, and Conway 2011). Especially in today's political and economic climate, it is doubtful that politicians will authorize a large infusion of public money to strengthen the government's oversight of NPOs.

Thus, in the absence of more regulation, it is reasonable to assume that nonprofit professionals, volunteers, and advocates will continue to ask the public to *trust* them to perform their duties and to exercise stewardship over charitable assets in an ethical fashion.

### Public Trust in NPOs

A number of media outlets and a few scholars have claimed that the public is losing confidence in the nonprofit sector at an alarming rate (Light 2002; Perry 2008). Some have focused on how public attitudes are shaped by the response of NPOs to specific events, suggesting, for example, that confidence in the nonprofit sector was shaken following the terrorist attacks of September 11, 2001 (in reaction to the American Red Cross's diversion of donations for victims' assistance to that organization's long-term needs; Salmon 2002). Others have tried to probe deeper into the constructs of "confidence" and "trust" to ascertain how these terms are interpreted and how people form their impressions of the nonprofit sector (Sargeant, Ford, and West 2006; Sargeant and Lee 2001, 2004).

In a recent paper that presents the best available meta-analysis on this topic, Michael O'Neill (2009) systematically examines the available evidence on public trust in the nonprofit sector and exposes the methodological problems with much of the prior empirical research on this topic.

First, O'Neill notes, as does this chapter, the issue of organizational diversity. The nonprofit sector is not a monolith of identical or even similar organizations. Thus, if citizens express a loss of confidence in the health-care system (see Exhibit 13.1), it does not necessarily follow that they also have lost confidence in symphony orchestras, food pantries, or the Girl Scouts.

Second, O'Neill suggests that constructs such as "trust" and "confidence" must be examined behaviorally as well as attitudinally. People's actions speak louder than their words. Thus, a rigorous effort to track trends in public attitudes toward NPOs should take into account tangible expressions of public trust such as the donations of time or money that people make to NPOs, as well as their feelings and attitudes.

Third, O'Neill properly notes that a rigorous examination of public attitudes toward NPOs requires trend data, not a simple snapshot of opinions at one point in time. Simply stated, the public has a short attention span. An ethical crisis in a prominent NPO may have immediate effects on public attitudes toward the nonprofit sector as a whole. But there is typically a cycle of ebb and flow to public attitudes. For example, the public's trust in the U.S. military was quite low following the unpopular war in Vietnam. Today, however, most public opinion polls show that trust in the military is very high relative to other branches of the government.

This raises the next problem in prior research that O'Neill has observed—the absence of data that compares trust in the nonprofit sector with trust in other types of institutions. Public trust in many types of institutions has generally fallen since the 1970s. A true picture of public trust in the nonprofit sector must examine it relative to trust in government or business organizations.

O'Neill's meta-analysis of many studies of public opinion, spanning more than ten years, yields the following general conclusions:

- Public confidence in NPOs is generally higher than confidence in government or business organizations.
- While public confidence in many types of institutions has fallen over the past thirty years, the nonprofit sector has, on the whole, not lost its trustworthiness position relative to other types of institutions.
- With some variability, public confidence in the nonprofit sector has been stable for more than ten years, with roughly two-thirds of Americans expressing positive views of charitable organizations.

- Charitable giving, though imperfect as a measure of public attitudes, seems to be stable in terms of the number of people who give to NPOs and the percentage of their gross income donated to charities.
- Data on volunteering, while even more nebulous than data on giving, show no consistent pattern of declining confidence in NPOs.
- There is no evidence of significant decline in public confidence in private elementary and secondary education or private higher education; nonprofit social services, arts, culture, and humanities organizations; nonprofit advocacy groups; or international organizations.
- While public confidence in the health-care system as a whole has dropped, there is mixed evidence that public confidence in private nonprofit health-care organizations has shown a comparable decline.

Advocates for the nonprofit sector might take comfort in O'Neill's findings that the nonprofit sector, relative to other institutions, seems to be modestly successful in its efforts to earn and sustain the public's trust. However, while O'Neill's analysis reveals no evidence of precipitous decline in public trust, it shows no evidence of strong *gains* either. We might ask, shouldn't the nonprofit sector aspire to more than just maintaining its position relative to other institutions in society? Shouldn't the nonprofit sector provide a beacon of hope and optimism for an increasingly disenchanted and cynical society? Shouldn't we demand more of the nonprofit sector? One might reasonably conclude from the O'Neill study that the nonprofit sector has failed to capitalize on a strategic opportunity over the past thirty years to fill the confidence gap that appears to be growing in the public's attitudes toward major institutions in society.

### **The Concept of Trust**

If the nonprofit sector is to do more than just sustain its current level of trust, we must ask: is there a set of ethical values, normative standards, and behaviors to which all NPOs should aspire? Thomas Jeavons (2005) argues that NPOs, regardless of their size or mission, can only operate with the public's explicit or implicit *trust*. This argument has also been made by Kearns (1996) and others (Buckholdt and Gubrium 1983; Estes 1989; Hammack 1995), who have said that trust is the most important strategic asset of any nonprofit organization. Trust is essential to NPOs because, for the most part, they are engaged in delivering public or quasi-public goods yet without the oversight and built-in accountability mechanisms usually required in government. The managers and board members of NPOs are not popularly elected; the details of their finances are rarely subjected to public scrutiny; their performance and

impact on society are difficult to measure; and the accountability standards and mechanisms in the nonprofit sector are ambiguous at best.

Jeavons (2005, 213–222) argues that public trust is maintained via the following universal ethical principles:

- *Integrity*: Honesty in the pursuit of stated goals and objectives; congruence between appearance and reality
- *Openness*: Being transparent to stakeholders
- *Accountability*: Explaining choices and documenting performance (see also Kearns 2011a, 2011b; Lawry 1995)
- *Service*: Devotion to the public good
- *Charity*: Giving to those in need and putting the welfare of others on a par with self

This is an outstanding list. Embedded within this list are other ethical principles of behavior, including the following:

- *Duty*: Fulfilling obligations and using power appropriately. This is embedded in the principles of integrity, service, and charity.
- *Fairness and justice*: Seeking equitable distributions of benefits and costs. This principle is implied by service and charity.
- *Honesty*: Being truthful and avoiding deceit. This is embedded in integrity, openness, and accountability.
- *Rights*: Respecting entitlements and claims. This is manifested in openness, accountability, and service.
- *Doing no harm*: Avoiding or minimizing injury. This is embedded in the concept of charity.

If every nonprofit professional and volunteer embraced and practiced these ethical principles, all of us would feel more confident that NPOs are trustworthy stewards of their charitable assets and missions. The problem, of course, is twofold. First, the fundamental character of human beings, including those who toil in the nonprofit sector, is imperfect at best and, in isolated cases, deeply flawed. People who work and volunteer in the nonprofit sector do not have a monopoly on strong moral character, despite the nobility of their cause. Regrettably, there will always be nonprofit professionals and volunteers who will use their positions to advance their own personal or professional interests or, shockingly, to intentionally do harm to vulnerable populations who are entrusted to their care.

Second, even ethical NPO professionals and volunteers whose intentions are pure may have difficulty interpreting and applying these universal ethical

principles in everyday practice. They may not intend to do wrong, but their zeal for the mission of the organization or even their desperation to ensure its sustainability into the future may cloud their judgment and lead to actions that are unethical (see Exhibit 13.2). In effect, they stumble when they are subjected to pressures from many directions and from diverse stakeholders who have competing expectations of NPOs.

The final section of this chapter explores some of the pressures impinging on NPOs and the impact of these pressures on ethical challenges and choices. Our purpose is not to defend a kind of moral relativism, but rather to illustrate that universal ethical principles gain clarity when they are understood within a context. Indeed, only when we attempt to understand the context in which NPOs operate can we probe deeper into the general ethical principles to understand how they might help NPOs anticipate and respond to ethical challenges (see Rhode and Packel 2009).

### **Pressures That Affect Ethical Decision-Making in the Nonprofit Sector**

Lester Salamon suggests that throughout history, four “impulses” have exerted tremendous influence over the nonprofit sector (Salamon 2011; cf. Anheier 2009). The four impulses, described below, all bring their own particular ethical challenges to NPOs. If we overlay the various dimensions of trust, discussed above, onto the four impulses, we see more clearly that NPOs face an extraordinarily wide range of ethical challenges and choices. Proactively engaging staff and board members in dialogue about these ethical issues, perhaps through regular strategic planning processes, will assist NPOs to anticipate scenarios that may call for subsequent actions to preserve public trust.

#### ***Voluntarism***

NPOs have historically pursued their missions through volunteers. Between 45 and 50 percent of adult Americans report that they perform some sort of volunteer service for nonprofit organizations. Estimates suggest that volunteers in the nonprofit sector represent the equivalent of 7.6 million full-time employees (Blackwood, Wing, and Pollack 2008).

But the voluntarism impulse has shaped the nonprofit sector in nuanced ways, far beyond the hours that volunteers spend doing work for the organization. According to Salamon, generations of citizens have used NPOs as an outlet for the expression of their personal beliefs, attitudes, and values. Faith-based NPOs are the obvious example, but other types of organizations such as advocacy groups, special interest groups, and self-help groups all



### Exhibit 13.2 Too Noble to Fail?

Some nonprofits advance missions that are noble and even courageous. Yet the leaders of NPOs that pursue morally laudable missions can have ethical lapses if they come to believe that their mission is synonymous with the public interest. When this happens, the leaders can easily equate the NPO's self-interests and preservation with those of the society it serves. That is, they come to see their organization, and perhaps even themselves, as "too noble to fail."

Consider the case of top echelon authorities at Penn State University. According to a grand jury report, in March 2002 a twenty-eight-year-old graduate assistant associated with the university's famous varsity football program witnessed a former coach, Jerry Sandusky, sodomizing a young boy in the shower room of the football complex. The victim in the alleged rape was a client in a nonprofit organization for at-risk youth founded by Sandusky. Rather than intervene immediately to rescue the boy, the graduate assistant returned to his office and phoned his father, who advised that the matter be reported to Joe Paterno, the iconic head football coach. Paterno reported the incident to the athletic director, who, in turn, discussed it with the senior vice president for business and finance and eventually with the president of the university. Weeks went by as the communication passed slowly through this internal chain of command. All the while no one reported the incident to law enforcement authorities. Instead, the former coach was simply told not to bring children onto campus and his keys to the football facilities were taken away from him. Astonishingly, nine years went by during which university officials did nothing else regarding the case. Meanwhile, other children were allegedly victimized by Sandusky.

When the grand jury released its findings in the fall of 2011, the university and its "noble" football program were thrown into a nationally publicized scandal. Sandusky was convicted on child molestation charges and sentenced to a thirty-year prison term. The athletic director and the vice president for business and finance were indicted on charges of perjury. The president of the university stepped down in disgrace. And the legendary football coach, Joe Paterno, was fired by the board of trustees.

The football program at Penn State was highly regarded for the integrity with which it performed. "Winning with honor" was its motto. It boasted of high graduation rates for its student athletes, and many former players and coaches spoke glowingly of the impact of the program on their lives, whether in sports or in professional life. And the coach, Joe Paterno, was revered not only as a coach but as a philanthropist, educator, and public servant. Indeed, before the scandal broke, he had been nominated to receive the Medal of Freedom, the nation's highest civilian award.

This case will work its way through the legal system for years. Meanwhile, ethicists will try to diagnose what went wrong. What factors, organizational and personal, might have had an impact on the decision of the graduate assistant not to intervene immediately to rescue the child from his attacker, but rather to retreat to his office to call his father? Why did Coach Paterno report the incident to his nominal superiors in the university instead of immediately contacting law enforcement authorities? Was he influenced by the closed culture of the football program? Was he acting out of misplaced loyalty to his former assistant? Why did university administrators choose to handle the incident internally? Self-preservation likely played a role in all these decisions, as did the likelihood of losing millions in revenue from the lucrative football program. But also there is the prospect that everyone in this case had come to believe that the university, and its football program in particular, were simply too noble to fail.

are embodiments of the values of those who founded them and those who now volunteer for and support them. These stakeholders view NPOs as vehicles allowing them to express their values, associate with others who share those values, and try to convince others to embrace those values (Jeavons 1992). Accordingly, voluntarism tends to push some NPOs toward highly normative expressions of ideals, both internally with their own members and externally to society. In other words, many NPOs try to convince us how to think and how to act with regard to particular issues. Thus the Sierra Club tells us we should be more concerned about the environment. The NAACP and the Urban League tell us to work toward a society free of racism in all its forms. The Multiple Sclerosis Society urges us to raise money to fight this particular disease.

Additionally, the voluntarism impulse tends toward highly individualized "stories" of personal transformation, ostensibly as the result of having followed the normative path recommended by the organization. Thus, at meetings of Alcoholics Anonymous, members tell their personal stories of recovery from addiction, usually attributing their success to following the AA-recommended twelve-step recovery program.

Moreover, recent research on the motives of volunteers is beginning to uncover a more complex picture of the exchange relationship between volunteers and the organizations in which they toil. Some volunteers are motivated by career development through networking, enhancing self-esteem, conforming to social norms and expectations, escaping negative feelings, and learning new skills (Clary et al. 1998). In sum, what people expect from their volunteer experience is multifaceted.

So how does the impulse of voluntarism impact the concept of trust? First, the voluntarism impulse contributes to the fluid, ad hoc structure and management culture of some NPOs. Decisions in such organizations can either be dominated by one or a few revered leaders (often the founders) or by the volunteers themselves, sometimes without clear organizational principles, checks and balances, or policy guidelines. In either case, the prospect for distortion, group-think, and institutional bias is high. In such circumstances, the stories that the organization articulates to the outside world regarding its worthiness for support may gravitate toward self-interest as opposed to public interest. For example, particularly zealous proponents of certain self-help groups can be almost evangelical in their testimonials of the group's value, implicitly or explicitly dismissing the legitimacy of competing ideologies. Thus the zeal of some NPOs for the values they espouse may overtly or subtly challenge the rights of people who hold contrary values.

Second, there is a trust relationship embodied in the implied contract between the NPO and the volunteer. The volunteer gives time and effort and in

return the NPO promises to honor the volunteer's values—if not by providing an outlet for their expression, then at least by not pursuing activities that are in direct contradiction to those values. But, as is the case in other such relationships between organizations and individuals, there is the problem of information asymmetry—the organization typically possesses more information than the individual. Thus, the volunteer for the Multiple Sclerosis Society must trust that the money raised from a charity bike ride will actually go toward services for people with MS, not into exorbitant salaries or benefits for the CEO.

The problem is more complicated when the volunteers are attracted to the organization by strong ideological or religious beliefs that, under certain circumstances, might cloud their judgment and lead them to be exploited by NPOs.

The concepts of *integrity*, *openness*, *service*, *accountability*, and *doing no harm* all come into play when NPOs interact with volunteers. And when value-based organizations interact with the outside world, the ethical principles of *integrity*, *service*, *duty*, *rights*, and *honesty* are particularly important considerations.

### ***Professionalism***

While volunteers have been the heart and soul of the nonprofit sector for generations, the sector is now managed principally by a growing cadre of highly trained professionals with skills in management, accounting and finance, marketing, fund-raising, program design, clinical specialties of all types, logistics, lobbying, and many other fields.

How does the professionalism impulse impact the concept of trust in NPOs? First, we can examine the impact of professionalism on the leadership of nonprofit institutions. Until the mid-1980s it was quite common for top leadership duties in NPOs to be assigned to employees who rose through the ranks from their mission-relevant clinical specialties. Thus, successful doctors often became hospital CEOs, successful social workers became leaders of human service agencies, and so on. While this still happens in some organizations, many NPOs are now led by people who are professionally trained to assume leadership positions in nonprofit organizations, having received specialized management training in schools of public administration, public health, business administration, social work, education, and other disciplines.

In some cases the top leadership of the organization is now somewhat removed professionally, and even ideologically, from its operational core. Thus, doctors complain that decisions related to patient care in hospitals are made by number-crunching bureaucrats, not by trained medical professionals.

Professors complain that the education of student athletes in large universities takes a back seat to fund-raising, television revenue, and athletic boosterism. Musicians complain that artistic enrichment is threatened by marketing experts who simply want to fill the auditorium with paying customers. Social workers complain that client services are now compromised by managed-care protocols designed and administered by professional bureaucrats. And so on.

When these professionally trained leaders bring their expertise to bear on the structural design of organizations, they often resort to fundamental bureaucratic design principles: division of labor, limited span of control of managers, vertical chains of command, and complex protocols for communication, planning, and decision-making. These approaches may contribute to accountability and efficiency, but they can quickly lead to professional silos that impede horizontal communication among professional subgroups, goal displacement, and even destructive internal gamesmanship and politicking. In such circumstances, ethical decision-making can become an afterthought.

The disconnect between top leadership and the operational core of the NPO can become even more acute when boards of directors become professionalized and institutionalized. When NPOs are founded, their boards are usually composed of people who have a strong ideological commitment to the organization (see discussion of the voluntarism impulse above) and who are willing to assist with its actual work. As NPOs grow, mature, and become more sophisticated, their boards generally become more distant from the actual work of the organization. They focus on policy, strategy, and, of course, fund-raising, sometimes to the detriment of the true charitable purpose.

When there are professional disconnects between leaders and the operational core in NPOs, there is a great risk of mission drift and the subordination of charitable services to meeting financial objectives. Thus, the ethical principles of *integrity*, *accountability*, *service*, and *charity* are particularly relevant to NPOs led by management professionals and governed by institutionalized boards.

Second, ethical challenges also exist at the operational core of highly professionalized NPOs (Deshpande 1996). This is especially true with respect to the manner in which professional service providers interact with the clientele of the NPO. The professionalism impulse can lead to professional arrogance manifested in the attitude that "we know what is best for the clients with respect to the services rendered." In effect, the loyalties of NPO professionals can easily drift toward their own professional codes and protocols, not to the clients they serve. In such circumstances, it is easy for them to stop truly *listening* to clients and consumers, to unilaterally impose treatment protocols regardless of observed idiosyncrasies, and to distrust any treatment modality that does not conform to their own professional training. Professionals in such

contexts are usually highly secular in their approach, showing little respect for values-based interventions. Moreover, professionalism can subtly create client dependencies rather than fostering independence and freedom of thought. Thus, some traditionally trained doctors will distrust certain types of holistic medicine or faith-based self-help programs for the treatment of addiction or other ailments (see discussion of the voluntarism impulse above). Professional therapists may distrust spiritual transformations toward mental health. And symphony orchestra musicians may have disdain for shifting cultural trends and tastes in entertainment.

Thus, at the operational core of highly professionalized NPOs, the ethical principle of *rights* is supremely important as are the principles of *integrity*, *openness*, *accountability*, and *service*.

Third, with respect to professionalism and ethics, we can examine the career paths of nonprofit professionals. A glaring weakness in the professional ranks of NPOs, and one that presents a very clear ethical challenge, is the distribution of women and minorities in leadership positions (see, e.g., Pynes 2000). While women are well represented in leadership positions in relatively small NPOs, and while minorities hold leadership positions in minority-oriented organizations, the proportion of both women and minorities in CEO and other senior staff positions drops precipitously in larger NPOs. Pay differentials based on gender and race is also a cause for concern in the nonprofit sector, which historically has advocated for equity and social justice. Diversity is a significant governance issue for NPOs as they examine the composition of their boards of trustees (see Brown 2003).

Finally, with respect to the professionalism impulse, we must ask how (or if) the training received by this emerging professional class of nonprofit employees is preparing them to establish and maintain public trust. Naomi Wish and Rosanne Mirabella have been vigilant in tracking the impact of professional training programs on the nonprofit sector (Wish and Mirabella 1999). They find that the skills and coursework of nonprofit curricula are focused on the *internal* environment of the organization, not its relationship to the external community or its broader role in society (338). Thus internal management skills like budgeting, accounting, human resource management, finance, statistical analysis, and decision analysis take precedence over “boundary-spanning” skills like advocacy, strategic planning, and external relations. Ethical reasoning seems to be conspicuously absent in many of the nonprofit curricula. It should be noted that this internal orientation seems to be particularly strong in master of business administration and master of public administration programs and slightly less dominant in master of social work or interdisciplinary training programs (Mirabella and Wish 2000, 225).

The obvious concern is that nonprofit professionals who have been trained in this type of educational environment may be quite adept at process control skills but less equipped to deal with the total spectrum of ethical challenges they will face.

### *Civic Activism*

NPOs have historically provided a mechanism to channel and focus the grass-roots energy of citizens, working alone or collectively, to affect public policy and the allocation of resources in society. Citizens have historically viewed NPOs as “mediating structures” (Berger and Neuhaus 1977) that provide accessible vehicles for affecting social change (see Exhibit 13.3, which depicts a particular case of courageous activism).

With respect to ethics, there are legal constraints on civic activism with which NPOs must comply, most of which deal with lobbying for a particular legislative initiative at the federal, state, or local level. The Internal Revenue Service is the enforcement body with respect to lobbying by nonprofit organizations.

However, compliance with legal restrictions is only a small part of building and maintaining public trust with respect to civic activism. The ethical challenges emerge especially when the nonprofit organization (1) selects the causes it wishes to advocate, (2) selects the methods of civic activism, and (3) monitors the short-term and long-term effects of its activism.

Giving sanction to any type of civic activism is indeed a solemn responsibility, never to be taken lightly. The organization’s credibility is on the line whenever it chooses to expend any of its political or social capital to effect a particular change. Promoting social change is loosely analogous to yelling “Fire!” in a crowded theater. One must be absolutely certain there is indeed a problem and that society must be mobilized to address it. Also, one must weigh the pros and cons of yelling “Fire!” as opposed to other methods of informing the patrons. And one must be prepared to accept responsibility (be accountable) for the consequences.

From an ethical perspective, and especially with respect to preserving public trust, NPOs must be absolutely clear about the philosophical grounds on which the civic activity is being undertaken, such as contractual obligation, social justice, moral or ethical reasoning, or promoting the common good. Moreover, the NPO must be prepared to examine alternative and even contradictory philosophical positions to ensure that the organization is prepared for opposition from others who are equally passionate and equally convinced that their position is the right one. In this respect, the NPO must compile the evidence to justify civic activism on the issue. Obviously, ethical civic activism requires that there are no conflicts of interest on the part of the NPO or



**Exhibit 13.3 Civic Activism or Meddling in Public Policy?**

In 2002 the Grable Foundation, the Heinz Endowments, and the Pittsburgh Foundation withdrew a grant of \$11 million from the Pittsburgh Public School District, sending shock waves through the philanthropic and educational communities in Pittsburgh and around the nation (Varela 2007). Technically, the action was taken because the school district had failed to comply with the terms of a particular grant, which was intended to introduce a new literacy program to the schools. On the surface, the three foundations used the legal contract to hold the district accountable for its nonperformance.

But beneath the surface there is a remarkable story of courageous civic activism by the three foundations and their leaders.

At that time, the Pittsburgh School Board was a governing body torn by ideological and racial disputes. To say that the board was dysfunctional is an understatement. Board meetings often disintegrated into verbal battles, racial epithets, and even physical confrontations. Meanwhile, costs in the school system were running out of control and the children in the schools were not being adequately served. Repeated efforts by mediators, consultants, and the news media failed to have an effect on the boorish and counterproductive behavior of the school board. The staff and the trustees of the three foundations took it upon themselves to take a dramatic step to highlight the issues and to mobilize a wide variety of public resources to address the problem.

The withdrawal of \$11 million was, from a purely financial perspective, inconsequential in the school district's budget. But symbolically the action was dramatic and pivotal. A blue-ribbon study commission was formed, parents became organized and mobilized, the media focused its energies and exerted substantial public pressure for change, and political leaders exerted personal and institutional influence. Eventually, the leadership and composition of the school board and the central administration changed hands and the Pittsburgh public schools seemed to be back on track toward high performance.

Despite the generally positive outcome of the action, there were critics of the three foundations who believed that this type of philanthropic muscle-flexing smacked of arrogance. Others believed that three private nonprofit organizations had no business meddling in local politics. Others believed that the withdrawal of the grant humiliated not only the members of the school board, but by extension the entire Pittsburgh community, whose dirty laundry was hung out for the entire nation to see.

In the end, however, most observers believed that the three foundations not only did the right thing, but did the thing right. Before withdrawing their funds, the foundations sought alternative solutions. Only when those approaches failed did they take the dramatic public stand. After withdrawing their funds, they did not abandon the schools but remained actively involved in finding solutions. And following the crisis, they reinvested in the Pittsburgh public schools and continue today to be central partners and advocates for Pittsburgh's schoolchildren.

any of its members. Sometimes NPOs engage in collective activism as part of a coalition of other organizations. In these instances, the NPO must pick partners for civic engagement very carefully, applying the same due diligence one would use in selecting a business partner or program collaborator.



When an NPO uses confrontational tactics or attempts to expose wrongdoing or injustice, it must take pains to ensure that the means of civic activism are justified by the ends. The NPO must also ensure that the organization has the capacity—skills and resources—to engage in civic activism in a responsible and sustained way. Exposing an issue without having the capacity to stick with the activism can do more harm than good. NPOs should be prepared for sustained, constructive engagement in the cause, seeking a solution, not just calling attention to the problem. Knowing an exit strategy in advance places one in an advantageous position to engage in responsible activism. Soon after it secured passage of the Children's Television Act in 1993 (that protects children from the physical and mental harm resulting from violence contained in television programs), the Association for Children's Television (ACT) closed its doors. This particular exit strategy drew national attention because relatively few nonprofit organizations declare "mission accomplished" and cease to exist. Peggy Charren, the founder and chief executive of ACT, stated that the organization had accomplished what she had set out to do. Some advisers urged her to continue the fight for children's television at the state and local level, but she declined, stating that neither she nor the organization had the capacity to be successful at that level of civic activism (Charren and Lilly Endowment 1992). This is another example of responsible and accountable civic activism.

With respect to civic activism, the ethical principles of *integrity, openness, accountability, service, duty, justice, rights, and doing no harm* are particularly salient.

### ***Commercialism***

As noted at the beginning of this chapter, NPOs have always occupied the hybrid space between purely public and purely private enterprises. They generate public or quasi-public goods and services, but to be effective and to survive, they must be entrepreneurial and they must serve markets with a sustainable mix of goods and services for which there is not only a demonstrated community *need* but also a *demand*.

NPOs have been urged to adopt business management methods such as market analysis and segmentation, business planning, industry analysis, break-even analysis, and product life-cycle management (Kearns 2000). The vocabulary used by nonprofit executives now includes language once heard only in the corporate suite, such as "protecting our competitive advantage," "developing a market niche," "strengthening our profitability ratio," "balancing our product and financial portfolios," "vertically integrating our supply chain," and "leveraging social capital."

Some forces are pushing while others are pulling the nonprofit sector toward a more commercial approach to management and service delivery. The pushing forces include new funding strategies in the health and human service domains, including managed care and voucher programs, which have greatly increased the competitive pressures on nonprofit service providers to reduce costs and effectively market their programs to potential consumers. The astonishing growth in the number of nonprofit organizations over the past thirty years also has increased the level of competition among those organizations for both consumers and for resources. Also, there is growing competition from the for-profit sector in fields like child day care, in-home health care, job training, and many other services where the nonprofit sector formerly enjoyed clear industry leadership.

The pulling forces include the growing professional ethic among nonprofit managers and staff that have been trained in schools of business administration, public administration, and in other programs (see the discussion of the professionalism impulse above).

With respect to legal constraints on commercial behavior, NPOs are liable for unrelated business income tax (UBIT) on earned income that is not related to their charitable purpose. Still, some businesses charge that certain NPOs enjoy an unfair advantage when they compete head to head because of their tax-exempt status. The IRS also has taken steps to regulate executive compensation packages in the nonprofit sector to ensure that they are in line with comparable nonprofit organizations and are not drifting toward commercial standards.

However, as we have suggested several times in this chapter, the most challenging ethical questions concern public trust, not just legal compliance. With respect to commercialization, the primary threats to public trust are perceptions about mission drift and the extent to which commercialization has eroded the charitable values upon which the nonprofit sector was built (Young 2002). Have NPOs become too business-like? Are they abandoning consumers who cannot pay for their services? Have they lost the charitable culture that attracts volunteers and donors to their ranks?

The empirical research on these questions is mixed and somewhat difficult to interpret due to the variability of missions of nonprofit organizations. So-called commercial NPOs, such as hospitals, that rely extensively on earned income for their existence can be expected to respond differently to commercial pressures than purely charitable NPOs like homeless shelters (Hansmann 1987). There are studies that show, for example, that nonprofit and for-profit hospitals are not significantly different in their commitment to providing uncompensated (charitable) care (Sloan 1998). Also, there is research suggesting that the boards of nonprofit hospitals provide no special

incentives for CEO to engage the hospital in charitable activities (Brickley and Van Horn 2002). In other words, the boards of nonprofit hospitals care deeply about profits.

In more traditional charities that rely extensively on charitable donations, the issue of commercialization is intermingled with the question of organizational survival, suggesting that human service organizations turn to earned income out of necessity or to enhance their financial self-sufficiency. Guo's study of sixty-seven human service agencies found that commercial revenues do not contribute to the organization's ability to attract donors and volunteers or fulfill its mission (Guo 2006). Similarly, Eikenberry and Kluver (2004) conclude that commercialization of traditional NPOs may have negative consequences for their ability to leverage social capital to achieve their missions.

These research findings are illustrated by the child-care industry, in which nonprofit providers are struggling to defend themselves against for-profit competitors. Government reimbursements and vouchers to needy families rarely cover the true fixed and variable cost of providing child care. Thus, nonprofit child-care centers are tempted to seek out more and more families who have the ability to pay the full market price so that their fees can subsidize the below-market fees paid by needy families. It is a delicate balancing act. If the nonprofits drift too far toward higher-income families that have the ability to pay full market rates, they jeopardize their charitable mission and risk losing the trust of donors and volunteers. On the other hand, if they commit themselves too heavily to needy clients, they run the risk of insolvency (Kearns 2006).

It is a daunting task to suggest a list of actions to help commercial NPOs traverse this veritable minefield of potential ethical hazards. But the following list is a starting point.

Above all, NPOs must ensure that commercial activities and competitive strategies are consistent with the organization's mission and core competencies (Frumkin and Andre-Clark 2000). Some techniques borrowed from the private sector can actually help nonprofits avoid mission drift. For example, the concept of product development life cycles can help NPOs evaluate their competencies and mission focus at each phase—idea, design, prototype, testing, and finally going to full scale—and be prepared to abandon a commercial program or service at any phase if it is not consistent with the mission and core competencies of the organization. There are other “business” techniques for specifying performance targets and holding people accountable for the achievement of those targets, including business planning protocols (Barczak, Kahn, and Moss 2006), compliance management systems, fund accounting and auditing, and quality control systems (Kearns,

Krasman, and Meyer 1994). Additionally, NPOs can use income portfolio methods to demonstrate exactly how earned income streams from some programs and services contribute to the support of programs that do not cover their costs (Kearns 2007).

Before engaging in a commercial service, NPOs must assess possible exit strategies and develop protocols for abandoning programs or clients that are ethically defensible and accountable (Boschee 2002). In addition, NPOs should engage only in competitive strategies that can be fully defended on ethical grounds (MacMillan 1983). Competition per se is not unethical. Indeed, even aggressive competition in the nonprofit sector can be ethically defended if a competitive strategy helps ensure that people in need are served by the organization best equipped to meet their needs and most able to use charitable resources to achieve the greatest good for the greatest number. Nonetheless, when playing in the commercial domain, NPOs must be prepared to comply with commercial standards of accountability, such as accounting and financial controls dictated by the Sarbanes-Oxley Act.

Commercialization complicates the accountability discussion because it opens the door to a whole new set of stakeholders whose interests may or may not be compatible with the charitable purposes and goals of NPOs. Venture philanthropists, entrepreneurs, product design and marketing specialists, and paying customers combine to create a melting pot of commercial interests on both the supply side and the demand side of the equation.

The ethical principles that are most relevant to the commercialization impulse in NPOs are *accountability*, *service*, *charity*, and *doing no harm*.

### **Strategic Dialogue on Ethics**

A useful activity in any strategic planning process, usually employed as part of the situation analysis, is the formulation of alternative scenarios for the organization's future. This is the part of strategic planning in which leaders and stakeholders ask "what if" questions about the organization and its strategic environment. Scenario development can be extremely useful as a heuristic device to help nonprofit leaders prepare for contingencies, including best-case and worst-case scenarios that will impact the organization's ability to advance its mission (see, e.g., Shoemaker 1991).

The discussion above may be useful to NPOs as they try to incorporate alternative ethical choices and scenarios into their cyclical strategic planning discussions. The supposition is that NPOs might anticipate and, therefore, more effectively respond to ethical challenges when they occur. The diversity of the nonprofit sector precludes a universally applicable set of discussion questions, but the following is proposed as a broad template:

- *Voluntarism impulse:* How is the overarching concept of trust relevant to the organization's history of voluntarism? What ethical principles should be followed with respect to the organization's implied contract with its volunteers? Is there any conceivable aspect of the organization's values-based mission, history, and management culture that could erode public trust?
- *Professionalism impulse:* How is the overarching concept of trust relevant to the professional standards embedded in the organization? Is there any aspect of the organization's professional culture, whether at the management level or in the operational core, that could conceivably threaten the public's trust? What ethical principles should be employed to ensure that the organization's professional culture advances its charitable mission and values?
- *Civic activism impulse:* How is the overarching concept of trust relevant to the social change mission and agenda of the organization? In what ways could the civic activism goals and tactics of the organization conceivably damage the public's trust? What ethical principles should be employed to ensure that the organization's civic activism agenda is pursued in a way that builds and preserves trust?
- *Commercialism impulse:* How is the overarching concept of trust relevant to the commercial strategies and tactics of the organization? In what ways could the commercial activities of the organization conceivably damage the public's trust? What ethical principles should be employed to ensure that the organization's commercial and competitive strategies are pursued in a way that builds and preserves public trust?

Table 13.1 summarizes some of the specific ethical challenges and opportunities prompted by each of the four impulses. Anticipation of these ethical choices, and open dialogue among board members and staff about how to handle them, could help the organization make the correct choices.

Using these and other prompts in brainstorming sessions with senior management, board members, and operational staff could reveal ethical challenges not previously foreseen. In the author's opinion, the process will be greatly enhanced by the participation of key external as well as internal stakeholders. Often employees and volunteers in NPOs cannot see the organization as others see it. Thus, soliciting views from clients, the media, key donors and partners, regulators, and other external stakeholder groups could significantly enhance the scenario construction process.

## Summary and Conclusions

This chapter has argued that trust is the central ethical principle governing NPO activities. Trust, in turn, is based upon several other ethical guidelines.

Table 13.1

### Ethical Challenges and Opportunities Prompted by Four Impulses

Voluntarism	Professionalism	Civic activism	Commercialism
<ul style="list-style-type: none"> <li>• Maintaining fidelity to volunteer values and aspirations</li> <li>• Maintaining stewardship of volunteer resources</li> <li>• Protecting vulnerable or naive volunteers</li> <li>• Being attentive to risks of ad hoc decision-making and informal structures</li> <li>• Protecting against group-think and insularity</li> <li>• Honestly reporting outcomes and impacts without exaggeration of personal stories of success</li> <li>• Recognizing the limits of voluntarism in addressing truly complex problems</li> </ul>	<ul style="list-style-type: none"> <li>• Keeping top executives connected to the operational core of the organization, even when their professional training is not aligned with the mission</li> <li>• Maintaining vigilance against goal displacement wherein the organization's mission becomes subordinate to professional "silos"</li> <li>• Being aware of multiple loyalties and role conflicts when employees have allegiance to their professional ethos as well as the organizational ethos</li> <li>• Keeping the board of trustees connected to the mission and operational core of the organization</li> <li>• Paying attention to executive salaries and perks</li> <li>• Paying attention to diversity and equity in pay scales within and across professions</li> </ul>	<ul style="list-style-type: none"> <li>• Clearly stating the rationale for civic activism, the ends being sought, and the means being used</li> <li>• Avoiding organizational or individual conflict of interest</li> <li>• Conducting due diligence on any partners or coalition for civic activism</li> <li>• Ensuring that the organization has the capacity to engage in civic activism in a responsible and sustainable fashion</li> <li>• Ensuring that confrontational tactics are undertaken in an ethically responsible way</li> <li>• Developing a responsible exit strategy for civic activism</li> </ul>	<ul style="list-style-type: none"> <li>• Ensuring that commercial interests and strategies are consistent with the organization's mission, values, and operating philosophies</li> <li>• Ensuring that the NPO's core competencies can support and sustain commercial ventures</li> <li>• Engaging only in ethical competitive practices, keeping community welfare at the forefront</li> <li>• Ensuring that partners in commercial ventures share the NPO's core values and will abide by ethical principles</li> <li>• Developing an ethical exit strategy for commercial ventures</li> </ul>

The interpretation and application of these ethical principles can be more fully, and more usefully, understood in the context of the diverse pressures and forces impinging on the nonprofit sector. We have used Lester Salamon's four impulses to illustrate competing perspectives on nonprofit goals, strategies, and principal stakeholder groups. These four impulses can be employed as lenses to reveal and diagnose certain types of ethical challenges that might otherwise escape notice. Utilizing these impulses to construct ethical scenarios can greatly enhance the ability of nonprofit organizations to anticipate and respond to ethical challenges.

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# **Part V**

## **Ethical Issues in Global Contexts**

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## Public Service Ethics in Africa

### Renewed Hope for an Integrated Ethics Framework

*Diane E. Yoder and Terry L. Cooper*

Corruption and bribery transcend state boundaries: they are temptations to public administrators and managers in every country, threatening peace, economic development, environmental sustainability, and human rights. In our previous work (cf. Cooper and Yoder 2002; Yoder and Cooper 2005), we acknowledged that many countries have recognized these threats and instituted comprehensive ethics policies and programs to combat such hazards. At the time, many international organizations had established international standards for public ethical conduct, common standards that could be implemented in several countries for more consistent public management ethics. We investigated emerging global standards, which Cooper (2004) identified as a key question in administrative ethics, in an introductory way and briefly presented the regional and international efforts to establish frameworks that transcend singular efforts by countries to promote ethical behavior and standards.

We examined the confluence of reasons for the emerging global ethics standards and reviewed some of the global and regional initiatives that allowed a convergence of ethical standards for public managers. We identified the work of Transparency International, a nongovernmental effort, as promoting ethical conduct in government and business, and we discussed the emerging global values that appeared to underlie the collaborative efforts. What we found in our earlier work was that the various regional and global declarations, agreements, and organizations could be understood as elements in a process of socially constructing a new international reality (Berger and Luckmann 1967). In the

absence of absolute foundational values and principles for public management conduct that were shared globally, consensus needed to be developed around those values necessary for the increasingly interdependent world economy and political institutions. The exceedingly complex and difficult process would involve a lot of transnational communication that might take decades and develop unevenly around the world. We were encouraged by the intensity of work that was done by the United Nations (UN), the Organisation of Economic Co-operation and Development (OECD), regional initiatives (e.g., Stability Pact for South Eastern Europe, Organization of American States), and Transparency International.

More important, we argued that if ratified, the UN Convention Against Corruption (UNCAC) would be a valuable global instrument in the efforts toward ethical administration. We had some concerns, particularly about the fledgling efforts in Africa and the nearly nonexistent efforts in the Middle East. We were also concerned that most efforts were largely driven by a commitment to market economies and democratization, and we questioned the universal appeal of the values underlying those efforts. We saw the need for further research on the convergence around international ethics standards, a developing ethics infrastructure that might transcend national cultural diversity, an identification of the underlying values and principles of integrated efforts, and whether these efforts were aimed at *a priori* guidance or *ex post* punishment. Finally, we saw the need for further research into the efforts involving Africa and the Middle East, and that need drives our purpose in the current study.

In this chapter, we examine the international and continental efforts to establish an integrated ethics framework in fifty-four countries in Africa, including northern and sub-Saharan countries. Often, countries in the north of Africa are included in the category of Middle East and North Africa (MENA), but we include those countries because they are part of a more continental African integrative approach. We first discuss the context within which these efforts are taking place, including a recap of the context for the emerging standards in 2005. Next, we briefly review the international and pertinent regional organizations and coalitions that existed in our first study (Yoder and Cooper 2005), and we update those efforts by identifying the progress made, as well as the new efforts that have evolved. We identify the common values that underlie those principles, including the traditional African values of *ubuntu* and *seriti*, which embody the ideas of interdependence and experiential wisdom (Nicolson 2008). We then survey the prospects for success of an integrative framework. Finally, we offer our thoughts on the promise of the international and continental efforts with a renewed hope for better and more ethical governance. Our method involves examining governing documents,

meeting minutes, briefings, news reports, and similar documents from both government and nongovernmental organizations. We recognize that while these documents espouse emerging ethical standards, they do not indicate much about actual implementation and conduct. However, we argue that as nations and nongovernmental organizations espouse common values, they may reflect the emergence of a shared standard of ethics.

We caution the reader that Africa represents a unique situation, with nascent efforts emanating out of the very real need to combat rampant corruption and bribery. We are hopeful that these efforts will follow along the path of integration we saw in our earlier work, but the reality of the African situation cannot be ignored, even when examining the continent's ethics standards through the familiar administrative ethics lens we use (cf. Rohr 2004). While we see emerging values such as transparency discussed in the ethics initiatives, governments and nongovernmental organizations are still finding their way in both the meaning and the implementation of such values. Their primary focus is curbing unethical behavior. If our discussion seems to highlight that, it is because of what is happening on the African continent. We believe that these values will continue to be contextualized and integrated into government practice, but at this time, governments are struggling to do so.

Table 14.1 lists the fifty-four sovereign states of Africa with full recognition of the United Nations.<sup>1</sup> These are the nations we include in our study, and all but Morocco are members of the African Union (AU). The continental plate of Africa is quite large and includes lands that are not considered African because they are parts of European or Middle Eastern countries. Table 14.1 also includes the official languages and the colonial heritage of the countries, as well as their informal regional grouping. The colonial heritage and language grouping are important to consider because some argue that corruption is worst in the Francophone states (cf. Faujas 2012). Some modern states, such as Burundi and Rwanda, have dual colonial heritage because the boundaries of independence did not follow strictly along colonial lines (LeVine 2004; Pakenham 1992). Aside from some brief Italian occupation in parts of Ethiopia, it was not considered colonized, nor was Liberia. Geographic groupings are important to consider because some regions suffer unique problems. For example, eastern Africa has the highest rates of HIV/AIDS and is one of the poorest regions, with the lowest economic indicators. Many countries in the region also suffer famine and cyclical drought. Western Africa is plagued by drug trafficking and political instability, including terrorism (UNODC 2010).

Next, we examine the international and regional context for the integrative ethics efforts, beginning with a brief review of the conditions we highlighted in our earlier work.



Table 14.1

**African Sovereign States**

State	Language	Colonial power	Regional grouping
Algeria	Arabic	France	MENA
Angola	Portuguese	Portugal	South
Benin	French	France	West/Central
Botswana	English, Setswana	Great Britain	South
Burkina Faso	French	France	West/Central
Burundi	Kirundi, French	Belgium, Germany	East
Cameroon	French, English	France, Great Britain, Germany	Central
Cape Verde	Portuguese	Portugal	West/Central
Central African Republic	Sango, French	France	Central
Chad	French, Arabic	France	South/West
Comoros	Arabic, French, Comorian	France	East
Côte d'Ivoire	French	France	West/Central
Democratic Republic of the Congo	French	Belgian	South
Djibouti	Arabic, French	France	East
Egypt	Arabic	Great Britain	MENA
Equatorial Guinea	Spanish, French, Portuguese	Spain	East
Eritrea	Tigrinya, Arabic	Italy	East
Ethiopia	Amharic	Italy (briefly)	East
Gabon	French	France	West/South
Gambia	English	Great Britain	West/Central
Ghana	English	Great Britain, Germany	West/Central
Guinea	French	France	West/Central
Guinea-Bissau	Portuguese	Portugal	West/Central
Kenya	Swahili, English	Great Britain	East
Lesotho	Southern Sotho, English	Great Britain	South
Liberia	English	West/Central	

Libya	Arabic	Italy	MENA
Madagascar	Malagasy, French	France	East
Malawi	English, Chichewa	Great Britain	South
Mali	French	France	West/Central
Mauritania	Arabic	France	West/Central
Mauritius	English	Belgium, France, Great Britain	East
Morocco	Arabic, Berber	France	MENA
Mozambique	Portuguese	Portugal	South
Namibia	English	Great Britain, Germany	South
Niger	French	France	West/Central
Nigeria	English	Great Britain, Germany	West/Central
Republic of the Congo	French	France, Portugal	South
Rwanda	Kinyarwanda, French, English	Belgium, Germany	East
São Tomé and Príncipe	Portuguese	Portugal	West/Central
Senegal	French	France	West/Central
Seychelles	English, French, Seychellois Creole	France	East
Sierra Leone	English	Great Britain	West/Central
Somalia	Somali, Arabic	Great Britain, Italy (briefly)	East
South Africa	Afrikaans, English, and nine others	Great Britain	South
South Sudan	English	Great Britain	East
Sudan	Arabic, English	Great Britain	MENA
Swaziland	English, Swati	Great Britain	South
Tanzania	Swahili, English	Great Britain, Germany	East
Togo	French	France, Germany	West/Central
Tunisia	Arabic	France	MENA
Uganda	English, Swahili	Great Britain	East
Zambia	English	Great Britain	South
Zimbabwe	Shona, Ndebele, English	Great Britain	South

*Sources:* African Union 2012b; LeVine 2004; Pakenham 1992.

## The Context for the Emerging African Standards

### *Our Research Findings from 2005*

From 1995 to 2005, many international and regional efforts to standardize ethics frameworks for public administrators and many efforts by individual countries developed for several reasons. First, governments and international organizations found themselves in an increasingly interdependent world. The future of the nation-state was challenged as the locus of governance for collective life, owing to increasing migration, the demise of the former Soviet Union and Eastern bloc, and regional political upheavals in Africa and the Middle East. Such events fueled a global connectedness that transcended national boundaries and manifested in financial, political, environmental, technological, and cultural ways (Cooper and Yoder 1999). This increasingly interdependent and interconnected world created a need for government structures to transcend individual nation-states. Soysal described the move toward global interdependence as "an increasing interdependence and connectedness, intensified world-level interaction and organizing, and the emergence of transnational political structures, which altogether confound and complicate nation-state sovereignty and jurisdiction" (1998, 195). Likewise, Keohane and Nye described the period as "thick" (versus "thin") globalism: "Globalization is the process by which globalism becomes increasingly thick" (2000, 108). According to their argument, the 1990s were characterized by a growing "density of networks," in which interdependent organizations grow in numbers and "intersect more deeply at more points" (112). As such, we saw an increase in "transnational participation" or an increase in the number of participants that span national boundaries.

The transnational participation involved in those global and regional cooperatives sought to improve governance in an interdependent world. Waltz argued, "The more interdependent the system, the more a surrogate for government is needed" (1999, 699). Farazmand echoed that sentiment: "Globalization has facilitated connection and coordination among peoples, governments, and nongovernmental organizations" (1999, 514). However, Farazmand noted that the increasing interdependence and globalization did not mean that nation-states and state administrations were doomed. Nor did they mean that the nation-state was not threatened by increasing supranational governance by "global" groups like the World Bank, the International Monetary Fund, and various UN groups.

Some argued that the rise in international ethics initiatives was no different from the rise in international organizations in general, which stemmed from globalization. O'Toole and Hanf noted, "A vast array of regimes and organiza-

tions has been established to manage whole fields of activity and collective policy problems" (2003, 159). We discovered other reasons in addition to globalization that may explain the emergence of international ethics efforts. First, many countries throughout Europe, as well as the United States, Canada, Australia, and New Zealand, spent the 1990s reforming their public management structures (e.g., "reinventing government" in the United States). These reforms included efforts to privatize public services, devolve administrative decisions to local levels, and increase the discretion available to individual administrators. Declining citizen confidence in government performance also prompted these reforms, as did budgetary pressures in the 1990s. Another reason for the emerging standards was one many scholars recognized: the threat to developing countries from internal corruption and bribery. Collingwood (2003) examined the practice of "conditionality," which emerged in the late 1980s and in effect tied international financial assistance to policy reforms and "good governance" (e.g., transparency, accountability, participation, democracy) in recipient states. Seligson argued, "There is growing belief in the corrosive effects of corruption in retarding economic development and undermining the consolidation of democratic governance" (2001, 221).

The demise of communism in the Soviet Union and Eastern Europe also changed the international administrative landscape contributing to the emerging standards. "The end of the Cold War has changed the balance of forces and removed any compelling need to support corrupt regimes for national security reasons. The widespread corruption and organized crime influence in the former Eastern bloc have made the problem difficult to ignore" (Rose-Ackerman 1999, 177). Rose-Ackerman also noted the increasing move toward privatization and deregulation and the rethinking of the relationship between the market and the state as reasons for the emerging global ethical standards.

Finally, a growth in globalized organized crime was another reason for increasing international ethics initiatives. Stanislawski argued that in the wake of the Cold War, the real threat to governments and to the democratic process came from "rogue non-state actors in the form of transnational organized crime or terrorism" (2004, 155). He suspected that nonstate actors sought cover from their state governments and within their boundaries, which we argued was reason for efforts to combat such actions and spoke to the need for government protection to span international borders.

Our original work was published just four years after the attacks of September 11, 2001, which could have been an impetus for increased attention to international ethics. Our research efforts began prior to the 9/11 attacks, and we found that the international initiatives discussed in our 2005 study predated the September 11 attacks. In fact, we found little mention of terrorism

or combating state-sponsored terrorism within those initiatives. Moreover, Transparency International foresaw a possible decrease in attention to corruption and bribery as governments struggled in the war on terrorism, arguing that the efforts of the last decade were “likely to be counterbalanced by increased emphasis in certain governments on antiterrorism agendas that downgrade the corruption issue” (Transparency International 2004a).

### *The Context for Emerging African Standards*

In many ways, we see a similar context for the emerging African standards. However, in the case of Africa, some contextual issues are different and provide both an impetus and an impediment to establishing integrative ethics standards. The conditions from our previous study that remain the same include the continued interdependence of nations around the world and the continuing question of the viability of the nation-state in such an interdependent world. This interdependence is exacerbated by continued globalization and continued economic interdependence. The economic downturn of 2008, perhaps made worse by the 2008 bankruptcy of Lehman Brothers, and the continued struggles of individual economies and the world economy have created a tenuous connection of nations around the world, whose economic independence is nearly nonexistent. For example, the problems inherent in Iceland’s 2008 economic crisis when three major banks collapsed, Greece’s 2010 debt crisis, and the United States’ 2011 credit downgrade had global repercussions, forcing regional and world financial alliances to try to resolve problems through collective means. Transparency International has defined corruption as “a cross-border problem” stemming from the interconnected financial world (Dell 2006). When one country has a pervasive problem, it can have consequences for others through misappropriation of aid monies, interference with trade and international investment, or the movement of “corrupt networks” from country to country (Dell 2006). In Africa, bribery, laundering of embezzled funds, and the obstruction of government inquiries are commonly seen as cross-border problems, providing impetus for emerging ethics standards.

Another continuing phenomenon we see is the need for collective policy responses to regional or global problems other than the economy. For example, nationally and internationally, sustainability of natural resources is a key concern. We also see global and regional environmental problems—for example, the trash vortex in the Pacific Ocean, air pollution in Asia—particularly China (cf. Kahn and Yardley 2007), and global warming—fueling international collectives to address them. Humanitarian crises like the current food shortage in the Horn of Africa or international disasters like the 2011 earthquake and

ensuing tsunami and nuclear reactor meltdowns in Japan create the need for multiple nations and international groups to respond. As well, military coalitions and intelligence collaboration to deal with international threats (e.g., terrorism, rogue nations wielding or developing nuclear weapons) continue.

We also see the ongoing attempt to downsize government, both for philosophical reasons (e.g., the Tea Party in the United States) and to cope with decreasing government revenues and continued or increasing spending as problematic. For example, the United Kingdom slashed US\$9.2 billion from its budget in 2010 to help pay off debt in 2011 (BBC News 2010). Although "reinventing government" has waned, New Public Management continues to get attention, as does the idea of using private sector tactics to manage public sector tasks (cf. Moore 1995). Certainly, if the neoliberal trend in the public administration literature is any indication, the calls to increase privatization, see citizens as clients, and decrease regulation will continue, as wrongheaded as they are (Schultz 2011).

These trends provide both an impetus and an impediment to African efforts to strengthen government and promote an integrated ethics standard. Yet African countries also face particular pressures that provide a greater impetus and impediment to integrative administrative ethics, including vast reserves of natural resources, continuing need for foreign and humanitarian aid, and continued conflict and power struggles on the continent. Africa's colonial heritage exacerbates many of these problems. Africa is replete with natural resources (e.g., oil, metals, minerals, forests), with the world's largest known oil reserves (Hanson 2008). The export of these natural resources creates "exceptionally high" revenues that "have accrued directly to government coffers" (World Bank 2003). This has led to resistance on the part of African national governments to reform or to increase accountability. The natural resource reserves are also an attraction, as they have always been, to foreign nations. Most recently, China and the United States have vied to secure Africa's oil reserves (Hanson 2008). By some estimates, China imported 3.5 million barrels a day from Africa in 2006, and that figure will increase by 25 percent in 2030. In 2006, Africa exported 9 percent of its total oil exports to China, while exporting 33 percent to the United States (Hanson 2008). The export business brings both enthusiasm and resistance from African nations because of the attendant wealth and the reminders of Africa's colonization by foreign nations.

As countries vie for Africa's natural resources, they invest heavily in African business and pour humanitarian aid into the country. In 2006, the European Union gave \$21.9 billion in aid to Africa (Kharas 2008), while in 2010, U.S. Agency for International Development (USAID 2012) gave \$6.4 billion to sub-Saharan African countries alone. In 2007, China gave \$18 billion in aid

to Africa, but this aid does not come with the usual human rights stipulations, transparency, or accountability (Lum et al. 2009). Similarly, Islamic militant groups like al-Qaeda, al-Qaeda in the Islamic Maghreb (AQIM), and Somalia's al-Shabab have stepped in to offer humanitarian aid without the usual human rights or democratic conditions. The aid is needed, however, to offset the continuing humanitarian crises that plague the continent. HIV/AIDS, drought, famine, and other humanitarian crises leave African nations desperate for foreign aid. HIV/AIDS caused 310,000 deaths in South Africa alone in 2011 (World Bank 2012a). Currently, 12.4 million people in the countries in the Horn of Africa (i.e., Ethiopia, Djibouti, Somalia, Kenya) face starvation (U.S. Department of State 2011). African governments are ill-equipped to handle the crises created by natural cycles of drought, weak governance, an inadequate agricultural infrastructure, and antiquated farming practices.

The need for humanitarian aid is part of the larger issue of economic development for Africa. According to the World Bank's (2012a) Africa Development Indicators (ADI) Database, some countries in Africa have made great improvements in economic development, but many still lag behind much of the world. For example, while infant mortality decreased in Madagascar, it increased 21 percent from 1990 to 2009 in the Republic of Congo. Life expectancy in Lesotho decreased by five years from 2000 to 2009. And 39 percent of Burundi's children (five years or younger) are underweight, while only 6 percent of Swaziland's children are. In spite of improvements, the World Bank (2012b) concedes that nearly half of Africans live on \$1.25 a day. Still, income growth in Africa has been impressive, estimated to be between 4.2 and 4.7 percent in 2010, and the World Bank estimates that Ethiopia, Ghana, Cape Verde, and Malawi will meet a majority of the Millennium Development Goals<sup>2</sup> in about three years (World Bank 2012b). Even so, others note that Africa is trailing in reaching these goals due to weak governments, lack of trust in government, and gaps in economic and social policy (Armstrong 2005). The African Union's current strategic plan argues that Africa "is still in development crisis. Thirty-four African countries feature among the fifty least-developed countries on the United Nations list; and African countries occupy the bottom twenty spots on the UN index for quality of life" (African Union 2010b, 14).

Africa scholars and observers are quick to point out that increasing economic development and prosperity is not the only reform for which Africans strive. Several cite the independence of South Sudan in July 2011 and the Arab Spring as evidence that Africans want political reform. "The Arab Spring has dramatically shown that economic performance alone is not enough in the long run. After all, Tunisia, Egypt, Libya, Algeria, and Morocco were among the fast-growing 'African lions' (analogous to the Asian tigers)," argue Hamam



and Ouédraogo (2011). Tunisia, Egypt, and Libya were caught in the same pattern of colonial rule and postcolonial military governments rife with corruption and oppression of their citizens. While those countries enjoyed financial gains, particularly from oil exports, unethical administrative behavior and a weak civil society were the norms. In spite of liberation, Egyptians are still fighting for political reform.

Conflict is endemic on the African continent. Nearly 12 million people are thought to have been killed in regional conflicts since 1990 (Rotberg 2006). Navanethem Pillay, the UN high commissioner for human rights, notes that "Africa has been plagued, more than any other continent, by armed conflict" (quoted in Johnson and Somane 2009–2010). In one study, researchers identified thirty-two conflicts ranging from "minor" to "war" in African countries between 1946 and 2001 (Gleditsch et al. 2002). Some of the internal conflicts were coups d'état, while other instability stemmed from cross-border conflict. For some, the question of who drives this conflict by supplying weapons to the continent is vexing (Johnson and Somane 2009–2010). Conflicts may be waning on much of the continent, and peace-building and security are top priorities of both individual nations and continental initiatives (Janneh 2007). However, some regions of Africa are particularly affected. Western Africa is characterized by great political instability. UNODC reports that "since 2000, the region has seen 10 coups d'état or attempts as such, three civil wars, and the assassination of one President," making it the "least stable region in the world" (2010, 1).

Part of the conflict is fueled by Africa's colonial heritage. Colonization by European powers in the 1800s destroyed traditional African ruling systems (e.g., a king or group of chiefs) in all but Ethiopia and Liberia (Rossouw 2005; UNDESA 2001a). With colonial rule came new governance mechanisms that mirrored the ruling country. For example, South Africa was annexed by Great Britain, along with Dutch settlers, establishing two republics that were then joined in 1911, but maintained a system of separation. Following World War II, colonial rule was firmly entrenched in most countries in Africa, even if it was relatively brief (about half a century) in comparison to Asia (Rotberg 2006). When African countries gained independence, anticolonial forces had difficulty creating democratic leadership in decisively nondemocratic former colonies (Rotberg 2006; UNDESA 2006). Most countries maintained some legal and constitutional structures from their colonial rulers (UNDESA 2001a). Educated elites ruled postcolonial countries, although some military personnel without formal education acceded to power. Still, independence left much of the each nation's wealth in the hands of governments or despots because most countries "lack[ed] a hegemonic bourgeoisie" (Rotberg 2006, 2). The colonial experience left a patchwork of governments, many of them

weak, and a resentment against international authorities and nations who may appear to be controlling African destiny.

Finally, Africa is plagued by international crime. Many parts of Africa are known for trafficking in drugs, humans, and other contraband (UNODC 2010). Western Africa, in particular, has seen increasing drug trafficking (specifically cocaine), and MENA countries are venues for drug trafficking. Sadly, human trafficking is on the rise, although precise statistics are hard to come by because of the nature of the crime and because several countries have limited or no legislation and attendant prosecution. In Africa, trafficking for domestic servitude, labor, sexual exploitation, and even "ritual killings or mystic practices" occurs (UNODC 2009, 51). It is particularly bad in the western and southern regions of Africa. In addition to trafficking, piracy is rampant off the coast of Somalia, as well as in the Gulf of Guinea, where the oil production and offshore rigs lure pirates (UNODC 2010). Finally, terrorism is increasingly a problem, particularly in West Africa. UNODC notes: "The Sahel region, a vast area bordering the Sahara Desert, is increasingly referred to as 'the new front in the war on terrorism'" (UNODC 2010, 3).

### **Organizational Efforts to Create African Ethics Standards**

In this section, we review the major governmental and nongovernmental initiatives to create integrative ethics standards for public management in Africa. We start by examining the global efforts of the United Nations and Transparency International. We then discuss African efforts at both the continental and subcontinental levels. Again, we caution the reader that even though Africa's nascent efforts espouse values, the initiatives spotlight the need to combat corruption and often identify values only in a cursory way.<sup>3</sup>

#### ***Global Initiatives***

The United Nations has undertaken several "global" initiatives to create international ethics standards. In the 1970s, the UN began to address ethics standards by establishing the Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices. General Assembly Resolution 3514 (December 15, 1975) authorized the ad hoc group, whose purpose was to issue statements on corruption and bribery and guidelines for how member states should punish various transgressions of public officials. The group's work culminated in a draft agreement that was never formally adopted. The principles of that agreement, however, laid the foundation for the UN's efforts two decades later.

In 1996, the UN spoke firmly through its General Assembly on a Declaration against Corruption and Bribery and its attendant International Code of

Conduct for Public Officials adopted at the eighty-second plenary session (A/RES/51/59). The declaration is nonbinding, but the Code of Conduct argued that a public office was “a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country” (United Nations 1996). The Code of Conduct calls for fairness and impartiality among public officials, offers guidelines on conflict of interest and disqualification, promotes disclosure of assets, recommends against the acceptance of gifts to curry favor, and notes that public officials must often maintain confidentiality requirements of their governments.

Many UN efforts are organized under the UN Office on Drugs and Crime (formerly UN’s Centre for International Crime Prevention’s Office for Drug Control and Crime Prevention), which focuses on transnational organized crime, unethical behavior, and trafficking in human beings. In 1999 the Centre for International Crime Prevention (CICP) created a Global Programme against Corruption, which consists of a research component and a technical assistance component. Specific measures were proposed for implementation at the international level. First, a “pool of high-level international experts” was to be established to focus the research and training of the program (UN Centre for International Crime Prevention [UNCICP] 2000). Next, the program called for transparency and accountability in government transactions, and the “the need for the creation of internationally recognized mechanisms of transparency and accountability.” The program also suggested the creation of international legal instruments to promote ethical governance. Finally, the program called for the creation of an international database and forum to share information among member states.

In December 2000, the UN directed the CICP to begin to draft an international convention to fight corruption (General Assembly Resolution 55/61). Between January 2002 and October 2003, an ad hoc committee met seven times to negotiate the UN Convention Against Corruption (UNCAC). The committee’s work was adopted by the General Assembly in October 2003 and opened for signing in December 2003 in Merida, Mexico. The convention stayed open for signing until December 2005 and surpassed the necessary thirty ratifications by thirty-one to enter into force (on December 14, 2005). A majority of African nations have signed and ratified UNCAC, although four countries—Côte d’Ivoire, Guinea, Sudan, and Swaziland have only signed—and six countries—Chad, Equatorial Guinea, Eritrea, Gambia, Somalia, and South Sudan—have neither signed nor ratified (see Table 14.2).<sup>4</sup> The first international convention to address corruption (Transparency International 2004a), UNCAC begins with this sentence: “Corruption is an insidious plague that has a wide range of corrosive effects on societies.

Table 14.2

**African Signatories and Ratifications of UNCAC**

State	Signature	Ratification
Algeria	December 9, 2003	August 25, 2004
Angola	December 10, 2003	August 29, 2006
Benin	December 10, 2003	October 14, 2004
Botswana		June 27, 2011
Burkina Faso	December 10, 2003	October 10, 2006
Burundi		March 10, 2006
Cameroon	December 10, 2003	February 6, 2006
Cape Verde	December 9, 2003	April 23, 2008
Central African Republic	February 11, 2004	October 6, 2006
Chad		
Comoros	December 10, 2003	
Côte d'Ivoire	December 10, 2003	
Democratic Republic of the Congo		September 23, 2010
Djibouti	June 17, 2004	April 20, 2005
Egypt	December 9, 2003	February 25, 2005
Equatorial Guinea		
Eritrea		
Ethiopia	December 10, 2003	November 26, 2007
Gabon	December 10, 2003	October 1, 2007
Gambia		
Ghana	December 9, 2004	June 27, 2007
Guinea	July 15, 2005	
Guinea-Bissau		September 10, 2007
Kenya	December 9, 2003	December 9, 2003
Lesotho	September 16, 2005	September 16, 2005
Liberia		September 16, 2005
Libya	December 23, 2003	June 7, 2005
Madagascar	December 10, 2003	September 22, 2004
Malawi	September 21, 2004	December 4, 2007
Mali	December 9, 2003	April 18, 2008
Mauritania		October 25, 2006
Mauritius	December 9, 2003	December 15, 2004
Morocco	December 9, 2003	May 9, 2007
Mozambique	May 25, 2004	April 9, 2006
Namibia	December 9, 2003	August 3, 2004
Niger		August 11, 2008
Nigeria	December 9, 2003	December 14, 2004
Republic of the Congo		July 13, 2003
Rwanda	November 30, 2004	October 4, 2006
São Tomé and Príncipe	December 8, 2005	April 12, 2006
Senegal	December 9, 2003	November 16, 2005
Seychelles	February 27, 2004	March 16, 2006
Sierra Leone	December 9, 2003	September 30, 2004
Somalia		
South Africa	December 9, 2003	November 22, 2004

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State	Signature	Ratification
South Sudan		
Sudan	January 14, 2005	
Swaziland	September 15, 2005	
Tanzania	September 9, 2003	May 25, 2005
Togo	December 10, 2003	May 31, 2006
Tunisia	March 30, 2004	September 23, 2008
Uganda	December 9, 2003	September 9, 2004
Zambia	December 11, 2003	December 7, 2007
Zimbabwe	February 20, 2004	March 8, 2007

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*Source:* UNODC 2012.

*Note:* Those countries that did not sign, but did ratify the convention have “acceded” to it, which is essentially ratification without signature and has the same legal effect.

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It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish” (United Nations 2003, iii). State parties to the convention must implement coordinated policies within the framework of their state government; those policies include both preventive measures (e.g., merit-based civil-service programs, transparency in procurement, conflict of interest guidelines, access to information, auditing) and punitive measures (e.g., mandatory criminalization of acts like bribery, asset recovery, compensation to victims, whistle-blower protection) (United Nations 2003; UN General Assembly 2003). In addition, state parties must agree to cooperate in the investigation and prosecution of corrupt acts. Finally, UNCAC calls for technical assistance and training on topics like criminalization of unethical administrative acts, public asset management, planning, and policy-making.

UNCAC has many strengths and weaknesses. Among its strengths are the promotion of international and regional, cross-border cooperation within a legal framework. It also promotes a more coordinated understanding of corrupt acts, includes private-sector contractors in its definition, and provides for technical assistance to countries with fledgling or struggling programs. In addition, the mandatory criminalization of specific acts is a major accomplishment. In reality, UNCAC may call for mandatory strategies and policies to promote ethical administration, but without enforcement, nations are not required to act on them. Even the call for monitoring of state parties is weakened by a peer-review process that is mainly a self-assessment without mandatory external observation. UNCAC does not “constitute political will in itself” (Hechler 2010). In looking at the list of signatories, it is apparent that even though some countries ratified the treaty, their actual implementa-

tion of it is uneven. Some call the treaty a “fig leaf” for corruption (Hechler 2010). We optimistically suggest that it is an olive branch.

The United Nations has many programs that collect and disseminate data on Africa, although many of them are focused on economic development, such as the UN Development Programme Africa Bureau and the UN Economic Commission for Africa (UNECA), or on health (e.g., Africa Health Infoway). The ECA has spotlighted corruption in its reports (cf. UNECA 2005; UNECA and OECD 2010) and conferences on development progress and has also offered training and technical assistance. Other UN groups like the Office of the Special Adviser on Africa or the Department of Economic and Social Affairs (UNDESA) take a broader view on economic, political, and social issues. Within UNDESA is the Department of Public Administration and Development Management (DPADM), which established the Africa Governance Inventory (AGI) Web Portal in 1999. The AGI disseminates governance information and facilitates information-sharing among African nations on issues like resource mobilization, policy implementation, and monitoring. Through conferences, workshops, and the web portal, African governments share best practices in governance and obtain guidance from UN experts. AGI’s focus on good governance and the increased transparency may result in governments promoting an integrated ethics framework. DPADM has a thematic section on Ethics, Transparency, and Accountability, which provides research reports, tools, and technical assistance to promote good governance. In doing so, the DPADM created an ethics infrastructure to promote good conduct and punish misconduct among public officials (DPADM 2012). Many of the group’s publications and tools focus on Africa, though the group has more of an information-sharing and networking function than a specific implementation and monitoring function. We suggest that these efforts can provide important guidance to African public officials, and the consistent messages of accountability and transparency are important in creating a continental structure that may foster right conduct.

Another initiative that we cited in our earlier work (Yoder and Cooper 2005) was the Global Forum on Fighting Corruption, the first meeting of which was held in 1999 in Washington, DC. Representatives from ninety countries promoted “Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials,” which focused on hiring, management practices, codes of conduct, criminal sanctions, auditing, autonomy, fairness, deterrence, disclosure, cooperation, and research to promote ethical administration. The second forum, held in May 2001 in The Hague with representatives from more than a hundred countries, had the particular goal of “strengthening the international anti-corruption movement and enhancing working level anti-corruption cooperation among professionals from the public sector, private

sector, and civil society” (U.S. Department of State 2001, 1). The forum has continued on a biennial basis, with thirty-three African nations participating. The conferences focus on education and awareness, promoting cross-border partnerships, increasing civil society participation, and other measures to promote ethical behavior.

One of the most noteworthy global nongovernmental initiatives is Transparency International, which bills itself as “the only international non-governmental organization devoted to combating corruption [that] brings civil society, business, and governments together in a powerful global coalition” (Transparency International 2004b). Having established 117 national chapters or chapters in formation around the globe, including twenty-four in Africa (see Table 14.3), Transparency International aims to promote cooperation in fighting corruption, safeguard public procurement, and disseminate information on how to promote ethical administration, with an emphasis on empowering local efforts. It advocates public deliberation, disclosure of information, whistle-blowing, administrative reform, and forming an “integrity circle,” in which a small group of colleagues agree not to engage in unethical behavior. The national chapters campaign for national anticorruption strategies through lobbying, working with the media, and facilitating working groups. Transparency International also works very closely with the United Nations to ensure that UNCAC is implemented.

Transparency International seeks to raise awareness of its core values: transparency, accountability, integrity, solidarity, courage, justice, and democracy. Every two years, the group sponsors the International Anti-Corruption Conference which meets to discuss corruption and share anticorruption strategies; the most recent conference, held in Bangkok, Thailand, in 2010, focused on peace and security issues, promoting accountability and transparency in energy markets and natural resource markets, “climate governance,” and corporate accountability. Transparency International also works to institute multinational conventions and to monitor compliance, but is quick to say that it “does not expose individual cases” of bribery or corruption (Transparency International 2004a). As with many of the initiatives mentioned here, the focus is on the prevention of corruption, not the policing of infractions. To raise awareness and to facilitate the development of policies and procedures in member countries, Transparency International also collects information on individual country efforts and publishes a wide variety of documents. Its *Global Corruption Report* focuses on collections of countries and on specific issue areas where unethical policy and administration are prevalent (e.g., water policy). Somewhat controversial, Transparency International (2011) publishes a Corruption Perceptions Index, which ranks countries based on surveys and other indicators to provide a global comparison. Problems with



Table 14.3

**African Members in Transparency International**

State	National chapter	Chapter in formation
Algeria		X
Burkina Faso	X	
Burundi	X	
Cameroon	X	
Democratic Republic of the Congo		X
Egypt		
Ethiopia	X	
Ghana	X	
Guinea	X	
Kenya	X	
Liberia	X	
Madagascar	X	
Mauritania		X
Mauritius	X	
Mozambique	X	
Niger	X	
Nigeria		
Rwanda	X	
Senegal	X	
Sierra Leone	X	
South Africa		
Uganda	X	
Zambia	X	
Zimbabwe	X	

*Source:* Transparency International 2012c.

the index are numerous, including the fact that third-party organizations collect data; the methodology evolves with each index making longitudinal comparisons obsolete; and *corruption* is a problematic word to define and elicits a range of responses.

These global efforts to create international standards for public management ethics are broad and uneven in their influence and enforcement. Certainly, the international community recognizes the importance of banding together to promote ethical administration. As Gilman and Lewis note, these initiatives “appear to undermine the ‘cultural determinism’ thesis which has heretofore dominated ethics discussion in public administration” (1996, 523). However, as we noted in our earlier work, others are not so optimistic about the efforts (cf. Rose-Ackerman 1999). While the global economy continues to struggle, nations may feel pressed to keep up with development efforts, and as cross-border and civil conflicts continue, loyalty to or cooperation with global initiatives may wane. While these initiatives are still being translated into concrete mechanisms to prevent bad acts, they are establishing more binding accountability and enforcement mechanisms; so we hesitate to predict their doom. Rather, we celebrate their continued evolution and suggest the focus should be on the common values behind such initiatives and the spirit of collaboration they produce, as well as the institution of a priori rather than *ex post* measures to promote ethical administration.

### *African Continental Initiatives*

In our previous work, we highlighted three continental initiatives in Africa: the Global Coalition for Africa, the UN Charter for the Public Service in Africa, and the African Union. We review and update them, focusing the bulk of our discussion on the AU, which is the primary initiative with 53 of 54 of the nations in our study being members (Morocco is not a member).

#### *Global Coalition for Africa*

The earliest effort was the Global Coalition for Africa (GCA), which was created in 1990 to serve as a forum on issues relating to development in African nations. The decade of the 1980s—called a “lost decade for the continent” by one UN official (Janneh 2007)—proved difficult for African nations. The decade saw economic, humanitarian, and governance crises that were poorly handled (or sometimes perpetuated) by military governments, single-party governments, and generally weak governance institutions. The GCA hoped to raise awareness of Africa’s difficulties in the global arena by working with other nations, international organizations, and interested parties. This desire

to create a network of interested parties was based on the recognition among African leaders that although the onus for growth was on their nations, they could only achieve their goals with guidance from external entities. Billing itself as “a catalyst for action” (GCA 1999), the GCA formally addressed the issue of ethics standards in a 1997 policy forum and launched an initiative to combat bribery in procurement (GCA 1997). The group noted the importance of promoting ethical administration in ways specific to the individual country’s experience, but argued that strategies must include public sector measures, watchdog agencies, public awareness, civic participation, an accountable judiciary, and the involvement of the media and private business. In 1999, the GCA held a Global Forum on Fighting Corruption, from which a declaration on collaboration evolved. Among other things, the eleven signatories agreed to

- Demonstrate leadership and political will;
  - Create budgetary and financial transparency, accountability, and integrity;
  - Eliminate conflicts of interest through effective laws and procedures;
  - Implement reforms that would restore integrity and morale to the public service;
  - Promote transparency in public procurement;
  - Establish and enforce self-regulating codes of conduct;
  - Establish autonomous, independent anticorruption agencies;
  - Facilitate cooperation in investigating and prosecuting corruption.
- (GCA 1999)

At the same time, the GCA adopted a declaration on promoting integrity among justice and security personnel. In 2001, the coalition sponsored the Global Forum II, where good governance and ethical administration were the focal points for the twenty-two African countries that were represented. The GCA continued holding conferences around its key themes of peace and security, democratic governance, economic development, and fighting corruption. Sadly, the GCA ceased operations in 2007, having played a crucial role in highlighting African issues on the global agenda and promoting cooperation among African nations (Janneh 2007).

*Charter for the Public Service in Africa/African Charter for the Public Service*

In 2000, the UN’s Division for Public Economies and Public Administration assisted the African Training and Research Center in Administration for De-

velopment in drafting a public service charter and code of conduct for public officials in the region. The purpose of the charter was to increase awareness about public service ethics, promote strategies for increasing transparency and professionalism in public service, and create behavior-changing tools for African countries to implement (United Nations 2000). The charter, officially published at the Third Pan-African Conference of the Ministers of Civil Service in Windhoek, Namibia, listed the fundamental principles of public service as equality of treatment, neutrality, legality, and continuity (UNDESA 2001b). The charter also cited the fundamental values of professionalism and ethics for public servants; noted rules of conduct on integrity, conflict of interest, disclosure, and political neutrality; and defined rules to promote accessibility to public services, participation, quality and efficiency, responsiveness, transparency, and reliability among public managers. A Code of Conduct was also established for public administrators, highlighting professionalism, "a sound culture based on ethical values and principles," integrity, avoiding conflicts of interest, declaration of assets, and political neutrality (UNDESA 2001b). And the charter encouraged horizontal cooperation among African nations to share information and best practices (UN Economic and Social Council 2001). Representatives from thirty-eight African nations endorsed the charter, and the African Training and Research Centre in Administration for Development worked with the nations and the UN to implement the charter. In support of the charter, UNDESA also began to sponsor the Project on Public Service Ethics in Africa, whose mission is to provide information on management standards, ethics initiatives, and anticorruption tools to help charter nations. Some argued that the charter "set the trends for any future treaty for public services in Africa" (Halleon 2011, 83).

The original UN charter was modified and reorganized into the AU's African Charter on the Values and Principles of Public Service and Public Administration over the course of five years starting in 2005 (*African Governance Newsletter* 2011; Halleon 2011). The purpose of adapting the earlier charter was to reformulate a shared set of values for the nations in the African Union. The African Charter espouses values and principles to inspire a more responsive, democratic, and ethical public service and serve as a catalyst for reform, but does not establish specific standards or rules of behavior (Nkoroï 2011; Tjihumbuma 2011). Chapter III of the African Charter offers a Code of Conduct for Public Service Agents (African Union 2011a), which includes several anticorruption and antibribery articles. The African Charter, "an important transformational instrument of the African Member States" (Nkoroï 2011, 4) is a nascent initiative with great promise. However, to date, only sixteen countries have signed it<sup>5</sup> with Kenya and Mauritius having ratified it. Fifteen nations must ratify the African Charter for it to enter into force.

### *African Union*

In our earlier study, we mentioned the African Union (AU) as a fledgling but promising group. We are emboldened by the continued progress the AU is making on many fronts, especially in promoting ethical administration. The Organization of African Unity (OAU), the predecessor to the African Union, was established in 1963 to assist African nations in their efforts to drive out colonialists and apartheid, to develop their economies, to nurture their sovereignty, and to promote cooperation. While the original purpose of the organization was not to combat corruption, the OAU adopted the Convention on the Prevention and Combating of Terrorism in 1999. It is important to mention the OAU because it represented one of the first efforts among thirty-two African nations to establish a cooperative organization. It was very important in helping postcolonial countries eradicate the vestiges of colonial rule, and it also helped several nations in their fight for independence. In September 1999, the OAU called for the establishment of the African Union (issued as the Sirte Declaration), and in the summer of 2002, the OAU was officially disbanded. All of the states in our study, except Morocco, are members of the AU.

The creation of the African Union, heralded as “an event of great magnitude in the institutional evolution of the continent” (African Union 2012a), was intended to continue and “accelerate” the integration of the African nations, to improve economic development, and to deal with the political, social, and economic problems brought about by globalization. The AU was officially launched in Durban in 2002 and its first assembly convened. The African Union envisions an “integrated, prosperous, and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena” (African Union 2012a). Objectives serving that vision are increasing African solidarity, defending African sovereignty, promoting common African interests on issues, encouraging international cooperation, promoting good governance and democracy, and encouraging sustainability and economic develop (African Union 2012a).

The AU saw the need for an Africa-specific convention on corruption. After several meetings and drafts, the African Convention on Preventing and Combating Corruption was finalized at the Maputo Summit in Mozambique in July 2003. The convention entered into force in May 2006 and has forty-four signatories<sup>6</sup> and thirty-one ratifications (see Table 14.4 on pages 316–317). The nations of Cape Verde, Central African Republic, Egypt, Eritrea, and Tunisia have neither signed nor ratified the convention (Eritrea was one of the nations that neither signed nor ratified UNCAC). The four-pronged approach of the convention seeks to prevent, detect, punish, and eradicate corrupt administration (African Union 2003). In doing so, the convention is founded on the principles

of democracy and participation, respect for human rights, transparency, accountability, and social justice and directs governments to adopt, implement, and enforce tough legislation to fight corruption and money-laundering. Like UNCAC, corruption is not specifically defined; it is only referred to as "the acts and practices including related offenses proscribed in this Convention" (African Union 2003, 4). Acts include solicitation, bribery, embezzlement of funds or property, conflicts of interest, "illicit enrichment," obstruction, and money-laundering. The inclusion of illicit enrichment is seen by some to erode "the principle of the presumption of innocence in criminal law" (Transparency International 2004c, 116). The convention defines a public official as "any official or employee of the state or its agencies including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State at any level of its hierarchy" (African Union 2003, 4). Parties to the convention are supposed to establish laws that prevent and criminalize unethical governance, also providing for asset recovery, access to information, whistle-blower protection, and education. The convention encourages "an environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs" (African Union 2003, 14). It addresses campaign and political funding, proscribing illegal financing. The convention also urges international cooperation and cross-border cooperation, not just in technical assistance and planning, but also in extradition of persons charged with corruption, mutual investigation of offenses, and protecting witnesses. Unfortunately, Article 24 allows parties to the convention to opt out of specific parts of the convention, which we feel weakens the overall effort.

Redundancy appears in the AU convention and UNCAC. Both conventions offer *a priori* measures, such as establishing anticorruption policies, procedures, and bodies; introducing procurement and finance standards; increasing access to information; and protecting witnesses and whistle-blowers. Both also include *ex post* measures like the criminalization of bribery, embezzlement, money-laundering, and obstruction of justice. However, UNCAC also provides for additional *ex post* measures like suspension or transfer of public officials, disqualifications from holding public office, compensation to victims, and a long statute of limitations (Dell 2006). As well, UNCAC provides for technical assistance. We suggest that redundancy across conventions serves to strengthen shared values and integrated ethics.

Article 22 establishes an Advisory Board on Corruption, made up of eleven members, to encourage implementation of the convention, collect data on member nations, advise individual nations, submit progress reports for individual nations, and "develop and promote the adoption of harmonized codes of conduct of public officials" (African Union 2003, 24). This is one

Table 14.4

### African Convention on Preventing and Combating Corruption Signatories and Ratifications

State	Signature	Ratification
Algeria	December 12, 2003	May 23, 2006
Angola	January 22, 2007	
Benin	February 11, 2004	September 9, 2007
Botswana		
Burkina Faso	February 26, 2004	November 29, 2005
Burundi	December 3, 2003	January 1, 2005
Cameroon	June 30, 2008	
Cape Verde		
Central African Republic		
Chad	December 6, 2004	April 2, 2004
Comoros	February 26, 2004	
Côte d'Ivoire	February 27, 2004	
Democratic Republic of the Congo	December 5, 2003	
Djibouti	June 17, 2004	
Egypt		
Equatorial Guinea	January 30, 2005	
Eritrea		
Ethiopia	June 1, 2004	September 9, 2007
Gabon	June 29, 2004	March 2, 2009
Gambia	December 24, 2003	April 30, 2009
Ghana	October 31, 2003	June 13, 2007
Guinea	December 12, 2003	
Guinea-Bissau	January 1, 2006	
Kenya	December 12, 2003	March 2, 2007
Lesotho	February 2, 2004	October 26, 2004
Liberia	December 12, 2003	June 20, 2007
Libya	May 11, 2003	May 23, 2005



Madagascar	February 28, 2003	December 17, 2004
Malawi		November 26, 2007
Mali	December 9, 2003	December 17, 2004
Mauritania	December 12, 2005	
Mauritius	July 6, 2004	
Mozambique	December 15, 2003	February 8, 2006
Namibia	December 9, 2003	August 5, 2004
Niger	July 6, 2004	February 2, 2006
Nigeria	December 12, 2003	September 26, 2006
Republic of the Congo	February 27, 2004	January 31, 2006
Rwanda	December 19, 2003	June 25, 2004
São Tomé and Príncipe	February 1, 2010	
Senegal	December 26, 2003	April 12, 2007
Seychelles		June 1, 2008
Sierra Leone	December 12, 2003	March 3, 2008
Somalia	February 2, 2006	
South Africa	March 16, 2004	November 11, 2005
South Sudan		
Sudan	June 30, 2008	
Swaziland	December 7, 2004	
Tanzania	November 5, 2003	February 2, 2005
Togo	December 30, 2005	September 14, 2009
Tunisia		
Uganda	December 18, 2003	August 30, 2004
Zambia	August 8, 2005	March 30, 2007
Zimbabwe	November 18, 2003	December 17, 2006

Source: African Union 2010a.

aspect of the convention that has been criticized because the advisory board is the only monitoring entity, but “lacks powers of investigation and cannot denounce [illegal] acts” (Transparency International 2004c, 119).

The AU convention is a promising step toward an integrated approach to establishing a framework for public management ethics in Africa. In spite of nonsignatories and weaknesses, we look to the AU Advisory Board on Corruption to strengthen its position in the coming years. Its strategic plan envisions the AU in 2015 as “an efficient organization that provides pertinent support to member States in the sustainable implementation of the AU Convention and the fight against corruption in Africa” (African Union Advisory Board on Corruption 2011, iii). The board notes that strength and legitimacy stem from its ability to coordinate efforts in Africa, provide solutions, and facilitate cooperation and “harmonization” of laws that promote ethical administration. Its admitted weaknesses include inadequate funding, staffing, and office space among other things, some of which may be remedied. One such weakness is the lack of strategic partnerships; however, the board is partnering with subcontinental groups, civil society organizations, and private sector organizations.

In addition to the board, the African Union gains strength and legitimacy as it continues to refine its strategic objectives. The strategic plan for 2009 to 2012 includes building continental and global cooperation; promoting democracy, human rights, and good governance; promoting citizen participation; and promoting the ratification of its legal instruments (African Union Commission 2009). Listed among its stakeholder expectations are transparency and accountability, integrity, fairness, and representation of ordinary citizen interests. The AU counts one of its strengths as the “mandate and goodwill of 53 African States (continent-wide organization)” (African Union Commission 2009, 17). We also see the strength of the African Union as an integrated body espousing the principles and values of good governance and acting as a leader and support for African nations. The consistent values and efforts to promote ethical frameworks in individual countries give us renewed hope for improved public management in the region.

### *The New Partnership for Africa's Development*

In 2001, the New Partnership for Africa's Development (NEPAD) was established to guide development on the continent, recognizing that economic development can only come from good governance, accountability, and integration. The group was a response to the high failure rate of development plans and programs amid the political instability and military governments in the wake of African independence. Member nations include all the coun-

tries in this study except Cape Verde, Comoros, Madagascar, São Tomé and Príncipe, and South Sudan. In 2001, three initiatives—the Millennium Plan and the Omega Plan, and the resultant New African Initiative—converged and resulted in NEPAD. The OAU and AU—founded Algeria, Egypt, Nigeria, Senegal, and South Africa—adopted NEPAD in 2001 and 2002, respectively (NEPAD 2012). The Economic and Corporate Governance wing of NEPAD works to enhance the capacity of member nations to promote good governance and management in development efforts, strengthen regulatory programs, improve sound management of public finances, implement transparent and consistent governance, and enhance corporate accountability (NEPAD 2012). Overall, NEPAD promotes harmony and integration on the continent and has been called the first “home-grown” development initiative that builds on human rights and citizen participation (*Africa Renewal* 2011; Johnson and Somane 2009–2010). More than ten years after NEPAD was founded, it still has staying power; in 2011, the AU fully integrated NEPAD’s framework into the African Union.

Although NEPAD has promoted success in agricultural development, infrastructure improvements, and science and technology, NEPAD’s most promising development to date has been the African Peer Review Mechanism (APRM), which it developed in 2003 and which we recognize as an important symbol of the shared values of participation, accountability, and freedom. This “unique experiment” is billed as an “original approach” to “evaluating political or economic governance in countries that are willing to be assessed” (*Africa Renewal* 2011, 12). APRM is a voluntary, self-monitoring initiative, to which thirty countries have acceded,<sup>7</sup> although only fourteen countries have submitted to review (Sawyer 2011).<sup>8</sup> Those reviews have highlighted electoral violence, corruption, gender inequality, and diversity management as common concerns in the countries reviewed (Hamam and Ouédraogo 2011). APRM monitors political governance and democracy, economic governance, socioeconomic development, and corporate governance using ninety-one indicators in a review conducted by African Heads of State, a panel of experts (Panel of Eminent Persons), the APRM Secretariat, and a Country Review Mission Team (NEPAD 2011a). The process includes a self-assessment, an APRM Secretariat report, in-country visits by the expert team that results in a country report, a report presented to the Panel of Eminent Persons, and the option for peer review by participating heads of state (Dell 2006). Supporters argue that the process is deliberate, nonconfrontational, and all-inclusive of government, business, and civil society organizations (Sawyer 2011). Critics argue that the review is not comprehensive enough, is limited by financial constraints, and does not contain any mandatory implementation of recommendations (Hamam and Ouédraogo 2011).

### *African Parliamentarians Network Against Corruption*

Another continental effort is the African Parliamentarians Network Against Corruption (APNAC), which began as the Laurentian Seminar Project in 1998 and was officially formed in 1999 in Uganda during a World Bank seminar on good governance in Africa. Recognizing that elected officials are crucial leaders in promoting ethical administration and are highly visible symbols of government (good or bad), APNAC “aims to coordinate, involve, and strengthen capacities of African parliamentarians to fight corruption and promote good governance” (APNAC 2012). APNAC has 21 member nations<sup>9</sup> and is headquartered in Ghana. The organization’s objectives are to share information on best practices, foster coordination among members and cooperation with civil society organizations, and encourage parliamentarians to foster transparency and accountability in their countries (APNAC 2012). Another key feature of the group is that it seeks to build political will, which fills a gap in several of the other efforts and conventions. In a survey of members of parliament in Malawi, Ghana, Sierra Leone, Benin, Mozambique, Zambia, and Liberia, APNAC researchers discovered that corruption was fueled by low pay, the high cost of campaigns, constituent pressure in an environment of dominant executive branches, and “the relative weakness of anti-corruption commissions to rein in governments” (APNAC 2010, 7). APNAC seeks to help members of parliament with tools, research, and a guide called *The Parliamentarians Handbook on Controlling Corruption*.

Other continental organizations exist, although many of them focus mainly on economic development, such as the African Development Bank, the African Economic Community, and the Africa Progress Panel. Transparency and accountability are themes that permeate these organizations. In addition, other nongovernmental organizations, such as the African Monitor and the Africa Commission, provide guidance or monitoring of development. These organizations focus on economic development, but with an eye toward grassroots consequences, democratic governance, or human rights, and we believe that their effort to highlight progress in economic development increases awareness and transparency.

### *African Subcontinental Initiatives*

#### *The Economic Community of West African States*

In 1975, the Economic Community of West African States (ECOWAS) was established, with headquarters in Nigeria, to help its member states navigate the international economic environment and to promote economic develop-

ment in and integration among its members.<sup>10</sup> The vision of ECOWAS is “to create a borderless, peaceful, prosperous and cohesive region built on good governance” (ECOWAS 2011, 1). The efforts to promote good governance include promoting human rights, prohibiting human trafficking, sponsoring civic education, and writing codes of conduct for the member states’ public officials. ECOWAS takes “an aggressive anti-corruption stance” (2011, 10) and pressures its members to submit to the APRM and sign memoranda of understanding with NEPAD. ECOWAS works hard to promote integration among its members, with an eye toward a strong regional or subcontinental group that also is integrated into the African and world economic arenas. Human rights, equality, and integration of civil society are also important principles. ECOWAS also focuses on peace, security, and resource development. In 2001, ECOWAS adopted the Protocol on the Fight against Corruption, which calls for an integrated and coordinated effort among member nations to eradicate poverty, using both preventive and punitive methods for both the public and private sectors. The protocol specifies “access to information, whistleblower protection, procurement standards, transparency in the funding of political parties and civil society participation” (Dell 2006, 33), in addition to the usual calls for asset declaration and codes of conduct. The protocol also calls for the criminalization of corrupt offenses and establishes a technical commission as an oversight mechanism. Sadly, the protocol has only one signatory and has not entered into force.

### *The Southern African Development Community*

In 1980, the Southern African Development Community (SADC) was founded as the Southern African Development Coordination Conference (SADCC) with the primary objective of liberating southern Africa as per the Lusaka Declaration, which was signed in 1979. After political liberation was achieved, the SADCC re-formed into the SADC at a 1992 summit held in Windhoek, Namibia, where the SADC Treaty and Declaration was signed. The new focus was economic independence and integration among the member nations.<sup>11</sup> The group’s mission is mainly economic development, to be achieved against a backdrop of cooperation, peace and security, efficiency, and good governance (SADC 2012). The group’s Regional Indicative Strategic Development Plan notes that development cannot progress “in conditions of political intolerance, the absence of the rule of law, corruption, civil strife, and war” (SADC 2011, 3). The plan also notes the importance of good corporate governance as an element of economic development. In 2001, the group adopted a Protocol Against Corruption, which has fourteen signatories (see Table 14.5). The protocol calls for member nations to establish preventive measures like codes of conduct,

Table 14.5

**SADC Protocol Against Corruption Signatories**

State	Signature	Ratification
Angola	X	
Botswana	X	X
Democratic Republic of the Congo	X	
Lesotho	X	X
Madagascar		
Malawi	X	X
Mauritius	X	X
Mozambique	X	
Namibia	X	
Seychelles	X	
South Africa	X	X
Swaziland	X	
Tanzania	X	X
Zambia	X	X
Zimbabwe	X	X

*Source:* Dell 2006.

asset declaration, laws addressing ethical administration, and public education, as well as punitive measures like seizure of assets, extradition policies, and the criminalization of unethical administrative acts. The protocol also recommends whistle-blower protections and increased involvement of civil society, within a harmonized, cooperative framework among SADC nations. The protocol entered into force in 2005 when nine member nations had ratified it. Like ECOWAS, however, SADC does not have much enforcement capability and has been reluctant to pressure or single out individual nations (cf. MISA 2011).

Other subcontinental efforts include the African Organisation of English-speaking Supreme Audit Institutions (AFROSAI-E), which includes twenty-three Anglophone countries as members and was formed in 2004 as a support network for public auditors. Several economic development organizations also indirectly work with the AU, NEPAD, and others to fight corruption. They include the East African Community, the Economic Community of Central African States, the Arab Maghreb Union, and the Common Market for Eastern and Southern Africa. Most of these organizations encourage transparency and accountability, especially in financial transactions, though they are mainly focused on promoting economic development.

No single international, continental, or subcontinental ethics initiative stands out as being an answer to ethical administration in Africa. Taken together, however, these initiatives represent a concerted effort to promote

transparency and accountability in African nations through expert guidance, mandates, peer review, technical assistance, partnership, mutual reciprocity, and recommended preventive and punitive measures. The coverage among the various initiatives is impressive, though ultimately the onus is on individual nations to implement and monitor efforts. Those nations that have enjoyed relative political stability in the last decade seem to embrace the initiatives; but they are still rife with despotic regimes, civil wars, civilian uprisings, or cross-border conflicts may endorse such initiatives and are lax in implementing reform. Without any enforceability these ethics initiatives may take a decade or more to operate in the intended way. Still, we are encouraged by the developments of the last decade and have renewed hope that the common values that undergird those initiatives will foster good governance and accountability. We discuss those values next.

### **Emerging African Values**

Before discussing the common public management principles and values that have emerged in the past decade in Africa, we briefly review the emerging global values in our previous study (Yoder and Cooper 2005). In that study, we cited the work of Gilman and Lewis (1996), who argued that even though values differ according to the particularities of cultures, common public administrative values were emerging. We noted, as we had elsewhere (cf. Cooper and Yoder 1999), that social trust provided a foundation for the common values. Specifically, "thin" trust (Newton 1997), or trust based on loose, weak, heterogeneous social relations, was present in the global ethics initiatives, which we found even more loosely organized across national boundaries and not beholden to central governments. We argued that the growing worldwide concern for corruption prevention and transparency in governance most likely stemmed from a realization that underlying the effective operation of market economies and democratic government must be commitment to several requisite values: the right to self-determination, freedom, honesty, trust, and stability. We cautioned that these were not the only ethical values important for markets and democratic governance, but the ones we saw implied in the emerging ethics initiatives. We offered a final caveat that many of the international and regional ethics initiatives were driven by major economic powers and thus focused on democratic and free-market values that may not have been embraced by all countries.

These values are still relevant and present in the global initiatives discussed in this study. As well, in both the global and continental initiatives, we see integrity and accountability as common themes. As Armstrong argues, "The concepts of *integrity*, *transparency*, and *accountability* have been identified



by the UN countries, collectively and individually, as part of the founding principles of public administration” (2005, 1 emphasis in original). Implied in these values is the idea that the public official should put the public interest above self-interest. We also see embedded in the different initiatives the OECD’s core values for public servants: impartiality, legality, integrity, transparency, efficiency, equality, responsibility, and justice (OECD 2000).

### *Traditional Values*

Before discussing the emerging African values stemming from the global, continental, and subcontinental ethics initiatives, we highlight the traditional African principles of *ubuntu* and *seriti*, which form the basis of most, if not all, of the continental and subcontinental initiatives. *Ubuntu* is the idea that humanity shares a common or universal bond that transcends individual interest and focuses on collective interests. Harmony and balance are key aspects of *ubuntu*. This value underlies the emphasis on the global village, the one in which all Africans and others around the world—and even ancestors and higher powers—are connected (Nicolson 2008). Shutte notes that that connectivity “can be translated to mean that a person is a person through other people” (2008, 27), meaning that the collective is not just the sum of individual parts. Reciprocity is critical to *ubuntu*, but so is the notion of self-determination. Current political instability and crises in Africa have led some to question the continuing importance of *ubuntu*, but even critics call for Africans to embrace this value to improve conditions and reform society (cf. Ndungane 2012).

*Seriti* is a complementary traditional value. In keeping with the idea of interconnectedness that *ubuntu* evokes, *seriti* (or power, wisdom, and respect) is gained by promoting communal values and efforts (Nicolson 2008). It is through good deeds that one gains *seriti*: “Anyone who contributes to wholeness and equilibrium has *seriti*, i.e., has earned respect in the community and that respect is prized above worldly wealth, positions, or status” (Nicolson 2008, 9). As such, the older one gets or the more status one attains, the more *seriti* one has. In gaining *seriti*, one also gains dignity. It is a commonly held assumption that one’s ancestors have *seriti* and “are exemplars of good conduct” (Mkhize 2008, 37). The two values, *ubuntu* and *seriti*, are mutually reinforcing. Expressed in both *ubuntu* and *seriti* is the idea of harmony. Indeed, harmony or harmonization (the term often used in African protocols and conventions) “is the overarching principle that glues all the other principles together” (Mkhize 2008, 36). Harmony evokes balance and order, and Africans believe that harmony—and conduct that promotes harmony—is key to ethical conduct and based on “relationships characterized by interdependence, justice, solidarity of humankind, respect, empathy, and caring” (Mkhize 2008, 37).

Evidence of these two values is found throughout the documents of the various continental and subcontinental ethics initiatives. The words *harmony*, *integration*, and *balance* appear in documents ranging from the AU Constitutive Act, the AU Convention on Preventing and Combating Corruption, the SADC Protocol Against Corruption, the ECOWAS treaty, and the African Charter on Values and Principles of Public Service and Administration to more informal documents like *The NEPAD Guide 2011* (NEPAD 2011a), the AU Strategic Plan, and the websites of the various organizations. Terms like *Africa-wide* (African Union 2010b, 32), *continental*, *African unity* (NEPAD 2003, 9), and *African peoples* (African Union 2003, 1) permeate the legal documents we reviewed. These modern terms indicate the support for the traditional African values of *ubuntu* and *seriti* and their importance in guiding the behavior of African public officials and citizens. According to the African Union, “Shared values have been understood to be those ideals which throughout Africa’s history have enjoyed common reference” (2011b, 1).

Nearly all the initiatives and supplementary documents make reference to democracy and the attendant values of equality, tolerance, participation, rule of law, freedom of association, and due process (cf. African Union 2011a, 2011b; NEPAD 2003; SADC 2001). As well, nearly all the documents pertaining to corruption make references to transparency, accountability, neutrality, impartiality, and integrity (cf. African Union 2003, 2011a, 2012; ECOWAS 2011; SADC 2001). The references to these values in both continental and subcontinental documents show clearly that most African nations are inspired by democracy and its attendant values. This is also consistent with the attempts of the nations in our study to promote economic development. In this way, these emerging values differ little from those that we recognized in our earlier work (Yoder and Cooper 2005). Moreover, the focus on and recognition of governance—networks of African governmental, nongovernmental, and civil society organizations working together toward democracy and development—are consistent with more global efforts and other regional initiatives.

The African Union expresses the importance of shared values among African nations, as evidenced by the African Charter on Values and Principles of Public Service and Administration (African Union 2001b), as do several AU conventions that focus on specific values like democracy or human rights. The African Union also sponsored a Summit on Shared Values in January 2011. In a discussion paper that preceded the summit, the AU noted that tolerance, the right to life and opportunity, participation, justice, integrity, and self-determination were individual-level values, while sovereignty, the rule of law, democracy, equity, and solidarity among African states were state- and regional-level values (African Union 2010b). These shared values are evident in other continental (e.g., NEPAD, APRM) and subcontinental (e.g., ECOWAS, SADC) efforts.

## Conclusion

Our study is in no way an empirical investigation of existing corruption and its causal mechanisms. Still, it is important to understand that corruption and bribery remain critical challenges for Africa in spite of the international, continental, and subcontinental ethics initiatives we have highlighted. Tax evasion, problems in public procurement, bribery, cronyism, rent-seeking (i.e., buying influence), lack of legitimacy in elections, disrespect for the rule of law, civil strife, ineffective service delivery, unethical behavior in corporate governance and privatization, and violations of civil rights continue in many African countries (cf. African Union 2010b; Rossouw 2005; Transparency International 2011, 2012; UNECA 2005; UNECA and OECD 2010). Still, many nations have made substantial progress. For example, the number of African countries that now have multiparty, democratic systems and elections has risen (cf. *Africa Renewal* 2011; UNECA and OECD 2010). Many countries report an increase in service delivery and public funds reaching their intended recipients (cf. Chêne 2007). Political representation and participation is improving (cf. UNECA and OECD 2010), and individual countries (e.g., Botswana, Mauritius, Lesotho, South Africa) have implemented decisive measures to combat corruption (cf. Gbadamosi 2004; Rotberg 2006; UNECA 2005).

Whether the established international or continental ethics initiatives will have an impact on African administration, we cannot say. These nascent efforts are gaining strength at the organizational level, although the implementation of the initiatives in individual countries remains uneven at best. Some countries, like Eritrea and Somalia, have not acceded to any initiatives. Others, like Guinea-Bissau, Chad, Republic of the Congo, Niger, and São Tomé and Príncipe, have only acceded to one initiative. The value of *ubuntu* and the increasingly interdependent world necessitate that the nations of Africa collectively face the issues they confront. Waltz argues, "The more interdependent the system, the more a surrogate for government is needed" (1999, 699). We suggest that the ethics initiatives can serve as important surrogates. In addition, we concur with the calls by the AU and others to increase partnerships with civil society organizations. We also note that the civil service systems in individual countries must do more to recruit skilled civil servants and maintain their employment with proper remuneration, merit systems, and benefits. Finally, we agree with NEPAD's Ibrahim Assane Mayake when he calls for the dialogue on and perception of unethical behavior to change: "The problem is that many Africans spend too much of their time repeating what the Western media says about the continent. . . . We seem to wallow in a kind of self-disparagement" (*Africa Renewal* 2011, 12). In this respect,

the advances in ethical administration in countries like Botswana and South Africa should be celebrated.

When we began this research in 2005, our most general observation was that the various regional and global declarations, agreements, and organizations could be understood as elements in a process of socially constructing a new international reality. That remains our conclusion now, after having examined the ethics initiatives in Africa. In 2005, we argued that a consensus in values might develop in the various international and global ethics initiatives and that those values may compensate for the absence of shared absolute foundational values and principles for the conduct of public management. As we have seen in the various initiatives to which the diverse nations of Africa have acceded, even the contrasting MENA, francophone, and southern African countries have found commonality based on the traditional African values of *ubuntu* and *seriti*, as well as the democratic values that underlie international economic development efforts. While individual nations may embrace the latter unevenly, most African nations recognize that economic development is critical and thus continue to warm to democratic values.

We recognize that our study only surveys ethics initiatives and that the task of understanding how they are contextualized and implemented in each of the fifty-four diverse and complex nations of Africa is beyond our scope. Thus, we call for future research to continue to examine the convergence around international and continental ethical standards and the implementation thereof. We also suggest that accession to these standards by individual nations be studied, and we encourage an examination of the effectiveness of and *ex post* measures to curb unethical behavior.

## Notes

1. Africa also has dependent territories, but they are not included in this study.
2. The United Nations established the Millennium Development Goals in 2001. They include eradicating extreme hunger and poverty; reducing child mortality; combating diseases like malaria; realizing universal primary education; improving maternal health; improving gender equality; ensuring environmental sustainability; and establishing global development partnerships (World Bank 2011).
3. Although we recognize the efforts of private sector organizations to address ethics in business and financial transactions, we are interested in ethics initiatives that speak directly to public administrators and public officials.
4. Signing and ratification of international treaties or conventions represent consent to the terms of the instrument. The difference is that if a country has only signed, but not ratified the treaty or convention, then it is not legally bound by the terms nor can sanctions be imposed. For a country to officially consent to be bound, it must present the instrument to its legislative body for ratification.
5. African Charter signatories: Burundi, Côte d'Ivoire, Republic of the Congo, Gambia, Ghana, Guinea, Kenya, Mozambique, Mauritius, Namibia, Nigeria, Senegal, Sierra

Leone, Togo, and Zambia. The Sahrawi Arab Democratic Republic has also signed it, but is not included in our study.

6. The partially recognized state of Sahrawi Arab Democratic Republic is a signatory, but is not included in our study.

7. Countries acceding to APRM: Algeria, Angola, Benin, Burkina Faso, Cameroon, Republic of the Congo, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda, and Zambia.

8. Countries that have submitted to review: Algeria, Benin, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Mali, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, and Uganda.

9. APNAC members: Algeria, Benin, Burkina Faso, Cameroon, Chad, Democratic Republic of the Congo, Gambia, Ghana, Kenya, Liberia, Malawi, Mali, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Tanzania, Uganda, Zambia, and Zimbabwe.

10. ECOWAS members: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

11. SADC members: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

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## Words Making Worlds

### Rhetoric and Ethics in Global Organizations

*Richard K. Ghere*

In his 1996 inaugural address as president of the World Bank, James Wolfensohn announced that institution's reinvention as a "knowledge bank." This transformation began with Steve Denning, a program manager at the bank who, after reflecting on the World Bank's diminishing success as a lender, envisioned a new future:

Suppose we were to share our knowledge? We had over 50 years' worth of knowhow about what works in development and what doesn't . . . But if we were to make it easy for anyone in the world to find out what we know, we could become relevant and useful. (Ramalingam 2006, 59)

If the World Bank has "stories to tell to the nations" for reasons other than mere information referral, it likely qualifies as a system of persuasion (see Alvesson 1993, 1011); in such a case, its development rhetoric warrants scrutiny as an ethical concern. Regarding ethical significance, some characterize rhetorical artistry in public affairs as the essence of civic virtue and others as manipulative strategy for advancing policy agendas. As for the former, rhetoric has been associated with Aristotelian traditions of communitarian "knowing" about civic matters (Green and Zinke 1993) and understood as a means by which public administrators can enhance their reflective and communicative skills (Farmer and Patterson 2003). But in policy arenas, rhetoric is understood as a tool to manipulate the symbols and images of prevailing

policies or those proposed to replace them (Baumgartner and Jones 1991; Riker 1986; Stone 1989).

This chapter explores the ethical implications of how global organizations utilize rhetoric and build narratives in various international policy or mission contexts. Attention to organizational rhetoric, in terms of the arguments conveyed to audiences and rhetorical strategies used to elicit adherence, raises ethical concern about the strategic purposes of “worthy talk.” At times, the rhetoric associated with globalization and governance appears foggy (Klingner 2004), intended to obfuscate as much as clarify.<sup>1</sup> In that regard, a global organization’s rhetoric rises to Riker’s “heresthetics” (a term he coined referring to the *art of political manipulation*) for “structuring the world so you can win” (1986, ix). That said, it follows that rhetorical manipulation resides as well in public management approaches and ethics remedies designed to modify behavior (e.g., see Stever 1986)—in essence, the discourse of adopted ideals.

Inquiry in this chapter follows the lead of legal scholar Douglas Parker, who, in presuming that “most human relationships are manipulative in nature,” examines the ethical propriety of “rhetoric within a broader concept of manipulation” (1972, 69). Parker relies on Perelman and Olbrechts-Tyteca’s seminal work *The New Rhetoric: A Treatise on Argumentation* (1969) in which the authors explain that “the theory of argumentation is the study of discursive techniques allowing us to induce or to increase the mind’s adherence to the theses presented for assent” (1969, 4). In this regard, *The New Rhetoric* includes commentaries on an extensive array of strategies relating to quasi-logical argumentation, the structure of reality, relationships in the structure of reality, the dissociation of concepts, and the interaction of arguments. Sorting through Perelman and Olbrechts-Tyteca’s commentaries, Parker associates ethical propriety with manipulation that is *nonexploitative*. Specifically, the speaker’s rhetorical techniques to gain adherence from an audience can be regarded as nonexploitative if the following conditions (paraphrased here) are met:

1. Speaker and audience occupy the same plane of general knowledge, such that the audience is capable of critical evaluation (Parker 1972, 72–73).
2. Rhetoric is calm, reflective, and reasoned rather than based on irrational emotion or deception (76).
3. Rhetoric is invited, and speaker provides disclosure of her biases or interests (77).
4. Speaker does not abuse authority (78–82).
5. Rhetoric does not depend on veiled threat—that is, the alternative use of a more loathsome form of manipulation (82).

Although space limitations preclude elaboration on these criteria, they appear generally congruent with public service values such as honesty, openness and disclosure, and proper use of authority (e.g., see Rohr 1986, 174–175). To this list, there is cause to add virtue regarding the speaker's commitment to reflection, self-deliberation, and/or learning in scrutinizing the ethical character of the rhetorical manipulation conveyed.

The section to follow examines the rhetoric of global organizations related to various arenas of international concern and relies on Perelman and Olbrechts-Tyteca's *The New Rhetoric* (1969) to identify particular strategies of argumentation used within them. A subsequent section compares the argumentative strategies employed as well as their ethical implications within and among those arenas.

### **Rhetoric in Four International Arenas**

Since rhetoric is relational, it is appropriately observed in particular fields of interaction. The rhetoric of global organizations is examined here within four "international arenas"—two of which (the development and the regulatory) correspond to areas of international policy-making, a third (humanitarian relief) constitutes a vital response component of disaster policy, and a fourth (human rights) either parallels what James Q. Wilson calls a contextual goal (1989, 129–134) that could be adopted by any organization or pursues a primary mission of human rights advocacy per se. Notwithstanding the tendency to speak of "development," "relief," or "human rights organizations," these arena designations should not be taken as limited to specific organization types. In this regard, research on global organizations contends with myriad definitions and taxonomies. For example, one commentator differentiates among donor agencies, operational NGOs, resource/support NGOs, and grassroots organizations (Padaki 2000, 436), while others offer different classification schemes. Further, the arenas in this study (with the possible exception of the regulatory arena) may overlap since some large NGOs are committed to development, relief, *and* human rights missions. Although these arenas provide helpful contexts for interpreting organization rhetoric, they are not intended to encompass a universe of global organizations or all categories of international concern.

#### ***The Development Arena***

The international development arena consists of numerous organizational actors, each of which can be regarded as global. Bilateral aid institutions—such as U.S. Agency for International Development (USAID) and the United

Kingdom's Department for International Development (DFID)—are actually governmental bureaucracies. Another set of actors includes what are known as international development agencies or IDAs (the World Bank, United Nations Development Programme, regional development banks, among others) that assume roles as dominant protagonists in formulating international development policy through the terms and conditions they place on aid, in essence “the ties that bind” in the development arena (see Wallace 2007). Large Northern international NGOs (Oxfam, CARE International, and WorldVision serve as examples) distribute resources acquired from aid institutions (the IDAs mentioned above) or from smaller organizational or individual donors to development projects often undertaken by in-country NGOs and grassroots organizations in the South. Here the terms “North(ern)” and “South(ern)” refer to international power and wealth (or lack thereof in the South) rather than literal hemispheric geography.<sup>2</sup>

The Oxfam UK-affiliated journal *Development in Practice* dedicated two (combined) 2007 issues to a symposium on discourse with inquiries that parse various buzzwords (such as “poverty reduction,” “participation,” and “civil society”) for their rhetorical capabilities to elicit adherence from diverse interests. That journal's editor introduces the symposium by quoting Lewis Carroll's *Through the Looking Glass and What Alice Found There* (1871) as follows:

“When I use a word,” Humpty Dumpty said, in a rather scornful tone, “it means just what I choose it to mean, neither more nor less.” “The question is,” said Alice, “whether you can make words mean so many different things.” “The question is,” said Humpty Dumpty, “which is to be master—that's all.” (quoted by Eade 2007, 467)

Few words can elicit more interpretations than *development* itself, which as political scientist Gilbert Rist observes is used to “to convey the idea that tomorrow things will be better” but, in doing so, seeks to establish legitimacy for particular development agendas as “taken-for-granted” (2007, 485). In this sense, securing taken-for-grantedness among diverse interests constitutes significant political accomplishment in the development arena.

For Western international development institutions, rhetoric functions to justify development policy interventions and their underlying ideologies. In essence, discourses serve to legitimize institutional development policy agendas in the midst of the ambiguity surrounding what constitutes betterment in the context of the contentious divide between North and South. In short form, the following constitute key policy ideas that generally employ cause-and-effect forms of argumentation to justify particular neoliberal<sup>3</sup> in-



terventions: desired change as *technical and apolitical, decentralizing power to autonomous organizations, market deregulation, the proliferation of civil society organizations promoting democracy, and private-sector involvement in public-service provision*.<sup>4</sup>

As could be expected, these linear cause-and-effect ideas supporting neoliberal agendas elicit harsh reactions from professionals who understand development as human capability and empowerment within immediate cultural and political settings. Some of these critics advocate a participatory mode of human actualization that parallels the work of Robert Chambers, particularly his *Whose Reality Counts? Putting the First Last* (1997), which advances a specific framework for participation-directed development. In fact, Chambers draws upon the Marxist teachings of Pablo Freire, who championed participatory action research dedicated to the transformation of political and economic structures. In essence, the World Bank and other policy institutions have successfully elicited adherence to their free-market ideas among adversaries by drawing upon discourses associated with Marxist ideology.

In their paper drafted for the United Nations Research Institute for Social Development (2005), Andrea Cornwall and Karen Brock trace how the United Nations Development Programme and the World Bank, through their conferences and publications, mastered “the art of feel-good rhetoric” to retrofit their neoliberal programs so as to incorporate Chambers’s (and Freire’s Marxist-leaning) buzzwords *poverty reduction, participation, and empowerment* to co-opt critics (2005, 2–3). These authors detail a variety of relevant rhetorical tactics (too numerous to include here);<sup>5</sup> nonetheless, their discussion explains not only how this rhetoric co-opts professional adversaries but also how it provides “cover,” enabling these institutions to abandon or substantially redefine their faltering structural-adjustment (or neoliberal) programs in the midst of a changing (less advantageous) global economy. Goethe’s observation “When ideas fail, words are very handy” (quoted by Cornwall 2007, 474) appears especially appropriate here.

Some critics direct attention to internal issues of institutional integrity concerning the knowledge acquisition process. Development scholar Robin Broad charges that research at the World Bank depends upon the confirmation of (neoliberal) axioms rather than refutation in scientific inquiry. Further, she maintains that a variety of internal practices (such as hiring, promotion, and selective rule-enforcement) at the bank serve to discourage dissent, especially among social scientists (2007, 703–704). Broad’s charges find corroboration in an essay of an economic adviser at the bank asking if “development agencies should have official views.” Here, David Ellerman likens development institutions to churches “proselytizing their own dogmas apply[ing] the new rhetoric of ‘learning’ as veneer” (2002, 285).

### *The Humanitarian Relief Arena*

As a generalization, it can be said that humanitarian organizations suffer from identity (and legitimacy) problems related to (1) the fundamental nature of "humanitarianism," (2) the relations between agency personnel and others—whether aid recipients, other aid organizations, or governments (either hostile or friendly), and (3) the actual impact of their efforts in the turbulent contexts of conflict or unrest. Relief rhetoric often addresses these identity ambiguities that have been intensified by what Michael Barnett describes as "humanitarianism transformed" (2005), or the politicization and institutionalization of relief aid. Related to the institutionalization of the humanitarian aid "industry," these organizations in turn enlist the power of rhetoric to project global images (of despair, hunger, etc.) in their fund-raising efforts (see Moro 1998).

Regarding the identity issue, Barnett distinguishes between two types of humanitarian organizations: "Dunantist organizations [associated with Henry Dunant, the founder of the International Committee of the Red Cross] define humanitarianism as the neutral, independent, and impartial provision of relief to victims of conflict and believe that humanitarianism and politics must be separated." By contrast,

Wilsonian organizations, so named because they follow in the footsteps of Woodrow Wilson's belief that it was possible and desirable to transform political, economic, and cultural structures so that they liberated individuals and produced peace and progress, desire to attack the root causes that leave populations at risk . . . Agencies involved in restoring and fostering economic livelihoods also express a Wilsonian orientation. (2005, 728)

For Barnett, humanitarian transformation came about in the 1990s as many aid agencies adopted a Wilsonian orientation out of the futility of mere aid provision, accepting the possibility that they could help eliminate the root causes that endanger people (724). States, on the other hand, began to recognize humanitarian endeavor—through alliances with, and in some cases financial support for, relief NGOs—as a viable foreign policy strategy. Contrary to Dunant's principle of humanitarian neutrality, Wilsonian agencies became actors in world politics under the premise that neutral relief provision amounts merely to helping the "well-fed dead" (728). Barnett comments:

Humanitarian principles were completely shattered in places like Kosovo, Afghanistan, and Iraq, where many agencies were funded by the very governments that were combatants and thus partly responsible for the emergency . . . [C]ommentators spoke of humanitarianism in "crisis" and warned of the

dangers of “supping with the devil,” “drinking from the poisoned chalice,” and “sleeping with the enemy.” (724–725)

Politically engaged humanitarianism clearly affects how aid agencies relate to other stakeholders.<sup>6</sup> In this regard, humanitarian organizations confront the critical dilemma of reconciling “dancing with the prince” (see Goodhand and Chamberlain’s discussion of NGOs interacting with Afghan warlords; 1996) with “doing good” rather than harm.<sup>7</sup> Rhetoric at the crux of the dilemma functions to validate the intuition that humanitarians can “do good” operating through political engagement with protagonists responsible for human endangerment. For critical audiences, such rhetoric may amount to little more than self-justification and rationalization.

But in *The New Rhetoric*, Perelman and Olbrechts-Tyteca offer some empathy for justification in their discussion of self-deliberation as a particular kind of argumentation such that “discussion with someone else is simply a means by which we use to see things more clearly ourselves. . . . Accordingly, from our point of view, it is by analyzing argumentation addressed to others that we can best understand self-deliberation, and not vice versa” (1969, 41). Implicit here is a reversal of the rationalist’s presumption of information-driven policy; rather, intuition gains clarity (for the deliberator and the audience) through argumentation after the fact. So for Perelman and Olbrechts-Tyteca, what critics disparage as self-justification could instead be taken as (organization) learning, refinement, and error-correction. A program officer with the WorldVision Sudan Program recounts how that NGO inadvertently depended on the military to recruit in-country aid workers, which in turn exacerbated conflict. She then discusses WorldVision’s subsequent participation in the Local Capacities for Peace Project (LCPP), a collaborative effort among several large NGOs created “to investigate the relationship between aid and conflict” (Riak 2000, 501).

In *Do No Harm*, Mary B. Anderson, who led the LCPP, “thinks aloud” not only about the hazards of political advocacy but also about the lessons learned that can assist aid professionals in “taking responsibility for the ways assistance affects conflict” (1999, 161). In particular, Anderson devotes an entire chapter to reflecting upon “implicit ethical messages of aid that reinforce conflict” (55–76). For example, aid agencies that hire armed guards, according to Anderson, signal “that it is legitimate for arms to determine who gains access to food and medical supplies and that security and safety are derived from weapons” (56). And in the midst of fear and apprehension, aid workers may take on defensive or arrogant behaviors in their interactions with soldiers or others on the ground; for example, an aid worker who says “You have no right to stop this truck. Don’t you see the name of our aid agency on our door?” communicates the idea that “You are untrustworthy. I know that you

only understand toughness. I am interacting with you in the only way you'll understand" (59). As it integrates reassessment into humanitarian advocacy, the LCPP (particularly as characterized in *Do No Harm*) illustrates deliberative argumentation that reflects authentic learning more so than "over-despised rationalization" (Perelman and Olbrechts-Tyteca 1969, 45).

Notwithstanding the moral dilemmas in politically engaged humanitarianism, distance allows aid agencies considerable latitude in determining how to portray their missions in fund-raising efforts. In other words, aid agencies make choices about what they reveal to donors in the North (or affluent societies) in conveying messages about their (good) work and/or (urgent) circumstances in the South. Is it more advantageous, for example, to convey a negative message about the South, positive views about agency outcomes, or both? (see Moro 1998, 77). In *The New Rhetoric*, Perelman and Olbrechts-Tyteca suggest that argumentation needs to start somewhere, such as in the selection of data that offer the liberty of interpretation. These rhetoricians rely on a Chinese fable to illustrate how selective argumentation can move some ideas to the forefront and others into the background of the audience's attention:

A king sees an ox on its way to sacrifice. He is moved to pity for it and orders that a sheep be used in its place. He confesses that he did so because he could see the ox, and not the sheep. (1969, 116; quoting Pareto 1935, 671)

Since ambiguity abounds in crisis situations, mixed messages from aid recipients are common, leaving both media outlets and aid agencies themselves choices, respectively, of how to report news and portray agency efforts—such as whether to emphasize

- Smiling children in a refugee camp . . . jostling, laughing, and joking as they press for handouts—or a stricken Kosovar mother for whom reaching the international aid agency across the border is a matter of life or death for her injured baby.
- A Turkish earthquake survivor thanking the international rescue team for freeing him from the rubble of his former home—or a wailing woman in Macedonia demanding more aid, crying "There is not enough; the food is insufficient; the shelter is overcrowded; we need more or our children will die." (Anderson 2000, 498)

Values dilemmas about the portrayal of humanitarian circumstances arise as well in the related arena of human rights advocacy, where warnings of "dire futures" lay credibility on the line much as in other settings where prophetic leaders need to balance underpreparedness against overcommitment.

### *The Human Rights Arena*

The arena of organizations purportedly advancing human rights, as confusing as it is crowded, intersects both the development and humanitarian aid arenas discussed above. Since the end of the Cold War, development NGOs, relief organizations, multinational institutions, and bilateral agencies have taken on the mantle of human rights for a variety of reasons, not the least of which is to claim the moral high ground. One NGO researcher's account of disagreements about the origins of the debate could well be interpreted as reflecting the transformative potential of human rights:

Some say that rights approaches derive from gender and human rights struggles, others that they come from the struggle for freedom itself. Others argue that they originate from the struggle for the recognition of rights of disabled people. Others still interpret rights-based approaches as a natural progression from the struggle for civil and political rights to economic, environmental, cultural, and social rights. Yet another . . . is that the different disciplines of development studies, economics, and human rights have been brought together by the debate on rights, united by the post-Cold War context that emphasizes the importance of rights. (Harris-Curtis 2003, 558)

Assertions that human rights talk consists of little more than enthusiastic sentimentalism but in other cases signals deep ideological divides add to the confusion. In terms of the first, one former NGO official confesses,

Simply talking about human rights quite literally makes me feel virtuous. At last, rights-talk seems to give the dry, quasi-scientific theory of development a moral and political vision. It can really make one quite excited. Such is the sad life of a British academic! This aspect of rights-talk is a bit like prayer. One mouths eschatological ideas about human dignity and the coming of heaven on earth. One prays and feels good but has very little idea of its power and effect. It does indeed allow one to walk the 'moral high ground' and makes one feel self-righteous. (Slim 2002, 3)

In this regard, Peter Uvin casts scathing criticism on the development community's rights talk as rhetorical fluff, claiming that "much of it is about the quest for the moral high ground: draping oneself in the mantle of human rights to cover the fat belly of the development community, avoiding challenging the status quo too much, or questioning oneself or the international system" (2007, 599).<sup>8</sup> Uvin proceeds to trace a sequence of ideological interpretations of human rights discourse that parallels Harris-Curtis's account of disagreements and at least implicitly explains the dialectical nature of changing interpretations.

Each iteration of human rights discourse identified by Uvin corresponds to one or more strategies of argumentation included in Perelman and Olbrechts-Tyteca's *The New Rhetoric* (1969). Uvin begins with "the right of development" as the first round of discourse whereby Third World nations, emboldened by the OPEC oil embargo of the 1970s, pressured for a redistribution of global resources to affect trade, finance, aid, investment, and information flow (2007, 598). Aside from working papers, little in the form of substantive policy came about, as Uvin explains:

This was the kind of rhetorical victory that diplomats cherish: the Third World got its right to development, while the First World ensured that the right could never be interpreted as a greater priority than political and civil rights, that it was totally non-binding, and that it carried no resource-transfer obligations. (598)

Nonetheless, the right to development reflects argumentation that depicts a symbolic relationship between the North and South to build upon in the future. About symbolism Perelman and Olbrechts-Tyteca comment, "It has meaning and representational value, these derive from the fact that between the symbol and what it evokes there is a relation which . . . we will call the relationship of *participation* . . . The symbolic connection, like those of other connections, is considered part of reality, but it does not refer to a definite structure of reality" (1969, 331; italics in original). In this regard, the (human) right of development can be taken as a place at the global table.

A second iteration of rights discourse, what Uvin calls *rhetorical incorporation*, emerged as Northern development institutions co-opted rights talk. Referring to pertinent World Bank and United Nations Development Programme documents, Uvin comments,

What these statements essentially do is colonize the human-rights discourse, arguing, like Molière's character who discovered that he had always been speaking prose, that human rights is what these development agencies were doing all along. Case closed; moral high ground safely established.  
(2007, 599)

In the 1990s, these aid agencies rhetorically incorporated various components of the so-called good governance agenda, such that "human rights" conflated with "free trade," "privatization," "structural adjustment" (in the form of relaxed government regulation), and so on. Uvin remarks that "policies that were once justified by their potential to improve investor confidence are now justified for their human-rights potential, at least in brochures destined

for the human-rights community” (600). Tautology, argumentation that establishes statements of equivalence, may have explanatory value in the physical sciences, as in the case of identifying an unknown metal (Perelman and Olbrechts-Tyteca 1969, 216). But in the context of this institutional rhetoric, tautology appears to formalize good governance ideology into a deductive system of self-confirming explanation.

For Uvin, a third wave of human rights discourse emerged in the early 2000s with a focus on human capabilities as freedoms, as economist Amartya Sen (recipient of the Nobel Prize for Economic Science in 1998) explains in *Development as Freedom* (1999).<sup>9</sup> Sen distinguishes himself from his neo-liberal colleagues as a traditional economist (in the company of Aristotle, Lavoisier, and others) “motivated by the need to study the assessment of, and causal influences on, the opportunities that people have for good living, [economists whose] attention was never confined to one concept [i.e., income] as instrumental and circumstantially contingent” (1999, 24–25). For him, the expansion of human capabilities includes the realization of economic, social, and cultural (ESC) freedoms or rights *in addition to* the civil and political (CP) rights typically acknowledged in some Western nations. Moreover, Sen understands that freedoms (such as education and health care) are alternatively constitutive and instrumental (ends and means) with respect to other freedoms (36–41). From the standpoint of rhetoric, Sen’s open-ended approach to economics counteracts narrow means-ends logic as an argumentative strategy, or, as Perelman and Olbrechts-Tyteca explain,

The logic of values, in its early elaborations, assumed a clear distinction between ends and means, with the ultimate ends corresponding to absolute values. But in practice there exists an interaction between the aims pursued and the means used to realize them . . . Certain means can be identified with ends, and can even become ends, by leaving the purpose they may serve in the vague, shadowy realm of possibility. (1969, 273–274)

All of this said, the acclaim of Sen’s ideas, according to Uvin, merely provoked development organizations to initiate human-capability efforts as add-ons rather than to reconfigure their missions around human capabilities and freedoms (2007, 602).

Peter Uvin presents his own advocacy of a “rights-based perspective” as a fourth iteration of human rights discourse (2007, 602–603). With due admiration for Sen’s ideas, Uvin’s difficulty relating them to concrete, specific actions prompts him to ask the “so what?” and “where does the rubber hit the asphalt?” questions. Referring to Sen’s humanistic orientation to economics, Uvin comments, “We, the softies, the do-gooders, the marginal ones need



every economist who comes our way! Yet, what is the concrete impact of this new thinking? What do development actors do differently when they redefine development along the lines of Sen's ideas?" (2004, 126) Although Uvin outlines the specifics of how a rights-based perspective reorients organizational mission, implementation, and learning in *Human Rights and Development* (2004), his recommendations<sup>10</sup> cluster around two premises. First, this approach redefines the nature of the development problem around rights *claims* and corresponding organizational *duties* to honor claims and hold other actors accountable (on behalf of claimants) for duties. Second, the rights-based approach demands *process* that is participatory, accountable, and transparent with regard to claimants' interests (2007, 602).

In regard to rhetoric, Uvin advances the "pragmatic argument," one that searches for the utility of norms (Perelman and Olbrechts-Tyteca 1969, 268). Nonetheless, this utilitarian rhetoric appears nested within the dialectic of (Sen's) abstract and (Uvin's) concrete values, such that, as the rhetoricians suggest, each increases the value of the other (1969, 77). NGO adoption of the rights-based perspective has been difficult and messy. Commentators report that a number of organizations have embraced it, only later to grapple with what it actually requires, although some, like Human Rights Watch and Amnesty International, have expanded to include ESC as well as CP rights (Harris-Curtis 2003, 559).

### *The Regulatory Arena*

At first glance, the international regulatory arena appears far removed from the development, humanitarian, and rights-advocacy arenas as a disparate set of organizations that "develop, promulgate, and implement rules on a global scale"—for example, the International Accounting Standards Board, the World Intellectual Property Organization, and the International Organization for Standardization (Koppell 2010, 4, 7). But in terms of game theory, the global regulation "game" offers rights-advocacy (or citizen-focused) NGOs opportunities to "institutionalize the distrust (regulation) that prevents abuse of power" (Braithwaite and Drahos 2000, 26). As epistemic communities that share values and rhetoric, these organizations consist of "technically competent regulatory experts from science, professions, business, and NGOs" (29). These agencies preside over games wherein powerful players (nations, corporate interests, etc.) engage in contests of principles (such as "transparency," "national sovereignty," "most favored nation," etc.) to determine which principle trumps the others, such that principles serve as strategic weapons. These global governance organizations (or GGOs as Koppell calls them) become elements of the game themselves in offering players forum-shifting

alternatives to circumvent other regulatory authorities or abandon those bodies in furtherance of their interests (Braithwaite and Drahos 2000, 28–29). In this regard, the rhetoric of “abstract principle” can be employed to “establish a hierarchy . . . distinguishable from the merely preferable in that it assumes an ordering of everything subject to the governing principle” (Perelman and Olbrechts-Tyteca 1969, 90).

With regard to the nature of regulation, the interpretive differences between global rules (Koppell’s term) and standards that “seek to convince rather than coerce” appear rhetorically significant in themselves (see Kerwer 2005, 611). Unlike governmental regulatory bureaucracies that issue directives, most of these entities have members such as nations, corporate firms, or both with a common concern to act (or at least appear to act) responsibly and coherently. Most often, those concerns are technical in nature but have significant economic consequences. The primacy of this member-group dynamic sets GGOs apart from domestic regulatory agencies with the statutory authority to exact “compliance”; by contrast, GGOs seek rule “adherence” such that each member’s deference will leave it no worse off than if there were no global rule or GGO.

The reality that international regulatory law (or standard) essentially amounts to quasi-voluntary adherence to rules exposes GGOs to a barrage of criticisms related to these alleged legitimacy and accountability deficits. Referring to critics who claim that these global organizations are useless (since they cannot coerce compliance) and lack accountability, Koppell takes note of the contradictory nature of these complaints:

How can global governance organizations (GGOs) be simultaneously accused of irrelevance and injustice? If international organizations don’t matter, why would anyone care whether they are unaccountable? The criticisms may reflect poor performance by international organizations, but more profoundly, they reveal the multiplicity of demands and pressures facing the organizations generating rules for the world. (2010, 2)

He goes on to suggest that GGOs are hardly irrelevant given the high stakes of rules in the global economy (8–12). Nonetheless, the need for global rules to some degree repudiates classical liberalism, as evident by standard-setting in financial markets. In response to a variety of financial market calamities, a 2003 “Survey on Global Finance” conducted by the *Economist* finds agreement that “finance must be intelligently regulated, at home as well as internationally, in ways that ordinary commerce does not require” (quoted in Kerwer 2005, 613).

Koppell argues that the proliferation of rule-making bodies should not be construed as “one-world government” but instead as a “network of multiple global

governance organizations" (2010, 12). In this regard, entities in the regulatory arena partake in a stakeholder language of cooperation and trust implicit in terms and metaphors such as *co-opetition* and *barn raising*,<sup>11</sup> similar to the terminology (like *collaborarchies*) associated with public management networks (see Agronoff 2007). But the fact that those obliged to adhere to global rules have stakeholder interests in rule-making and implementation leads to inherent tensions of legitimacy and accountability, and competing interpretations of both, within effective GGOs (Koppell 2010, 31–71). In essence, a pragmatic interpretation of legitimacy (emphasizing interest-based acceptance by member stakeholders) challenges the more conventional normative legitimacy as external expectations. Conversely, an interpretation of accountability that stresses responsiveness ("Did the organization fulfill its expectations?") contradicts that of responsibility ("Did the organization follow the rules?") (Koppell 2010, 75).

These legitimacy and accountability conundrums lead Koppell to explore the elusive logic of global governance as a riddle, paraphrased loosely here as "When (and why) is *strong weak* and *weak strong*?" The implication is that to be effective in achieving global rule-adherence, GGOs must temper how they exert influence to conserve their pragmatic legitimacy. With regard to accountability, it could be argued that the global community is better served by organizations that finesse enforcement than by those that scare away members. Nevertheless, even artful GGO diplomacy cannot depend on all carrot and no stick. Thus, the means of discipline by which GGOs deal with nonadherents lies at the heart of this riddle.

As mentioned above, rhetoric that emphasizes unity and common purpose, including rubrics of collaboration, partnership, co-opetition, and joint decision-making, is more prevalent than provocative statements with the potential to engender conflict. Nonetheless, more significant forms of strategic argumentation lie deeper within the symbiotic relationship between a global governance organization and its member-adherents. In focusing on members and groups, Perelman and Olbrechts-Tyteca maintain that *membership in itself* can present an argument of legitimacy:

Although the reality of a group may depend on the attitude of its members, it depends as much and even more on the attitude of outsiders . . . It is to be observed that it is the needs of argument which explain the tendency to form into a group and band together all those who are seen to share the same attitude, the supporters and opponents of a certain viewpoint, a certain person, or certain way of acting. (1969, 323)

The importance of legitimacy through affiliation or membership can be generalized to network-oriented organizations in a variety of contexts; in

essence, networks that “work” enable their participant organizations to exert influence in the broader community (e.g., see Provan and Milward 2001, 420). But for critics on the outside, legitimacy through membership may amount to little more than “club rules” to promote business (see Ronit and Schneider 1999, 247–251).

In regard to GGO authority (or lack thereof), *weak is strong* when it offers members latitude in adjusting to rules. But how can a weak GGO discipline its nonadherent members? Koppell arrays various adherence mechanisms used by GGOs, ranging from the explicit and severe (shaming or membership suspensions) to the less conspicuous (requirements of explanations or formal reporting), at least to those outside the group or relevant sector (2010, 206–207). Although some GGOs have third-party agents (national or trade-standard committees that may be more or less motivated) to enforce these mechanisms, these agent functions are less formal than the contractual nature of the conventional principal-agent framework in organization discourse. In this regard, the nature of group discipline reflects argumentation that interacts with other (e.g., legitimacy) discourses. Perelman and Olbrechts-Tyteca indicate that groups have the option to “reject immediately, and more or less automatically, any nonconforming member . . . [but] more frequently used than techniques of severance are the techniques of restraint” (1969, 325). Since the imposition of more severe sanctions disturbs the cooperative cultures of GGOs, more emphasis is usually placed on the positive motivation for adherence than on disciplinary sanctions.

The adherence enforcement conundrum is but one example of the “weak versus strong” riddle central to Koppell’s examination of global rules and organizations that promulgate them. That dilemma is by no means restricted to the GGO experience but relates to most organizations striving to mediate principles with reasonable outcomes. Perelman and Olbrechts-Tyteca highlight the conflict between the absolute and the feasible within both pragmatic and member-group argumentation. Regarding the former, they observe, “The pragmatic argument is criticized by those who believe in an absolutist or formalist conception of values and, especially, of morals” (1969, 269). In reference to the latter, they comment (in essence) that only perfect members can abide perfect groups, and vice versa (324). In the spirit of these ideas, Koppell’s concluding paragraph in *World Rule* addresses the accountability issue in GGOs as follows:

Insistence that GGOs display unbending fidelity to traditional legitimacy and accountability expectations imported from the domestic sphere is quixotic and self-defeating. *Responsibility*-type accountability can never be the exclusive goal of GGOs. Only by deviating (at times) from the

requirements of legitimacy can global governance institutions effectively address the transnational problems of the twenty-first century. (2010, 322; emphasis in original)

The perfect should not drive out the good.

### Comparisons and Implications

It is fitting at this point to compare the various argumentative strategies used in the four international arenas discussed above and to comment on concerns of ethical propriety related to the use of rhetoric in each. Table 15.1 summarizes the function(s) of rhetoric and the argumentative strategies employed and then assesses questions of ethical propriety related to the rhetoric, within each arena. In reference to the international development arena, for example, a number of commentators document that Western development agencies aggressively engage in the art of rhetoric in crafting policy that determines (1) how “development” is to be understood, (2) how ideology translates into specific forms of North–South intervention, and (3) how ideologically based implementation strategies (particularly those with disappointing results) are subtly revised and in some cases abandoned. In large part, rhetoric has served in the development arena to legitimize neoliberal ideas of development that exalt free market interventions (e.g., decentralized government authority, privatization of public functions, the relaxation of government regulations) to achieve development as defined narrowly in aggregate terms of economic growth and per capita income. Thus, means-ends argumentation prevails as the technique of choice that, as Perelman and Olbrechts-Tyteca suggest, allows speakers to emphasize “clear distinctions between ends and means” even though there may be considerable interaction between them (1969, 273–274).

Several of Douglas Parker’s criteria for assessing the ethical propriety of rhetoric (enumerated above) emerge as pertinent to the argumentative strategies that have energized international development policy formulated by Western aid institutions. As the table indicates, reliance on deductive, axiomatic logic (of classical economics) essentially undercuts the capability of audiences (most often, those in the South) to engage the discourse of development. But beyond this, the development industry has become increasingly proficient in reframing rhetoric in ways that disguise the political as “technical and apolitical” and co-opt Third-World advocacy ideas so that they can be assimilated into Western institutional vocabularies and agendas—the World Bank’s co-optation of Freire’s Marxist ideas of participation serves as a prime illustration. In such cases, deft word-crafting intended to elicit global

Table 15.1

**Functions, Argumentative Strategies, and Propriety of Rhetoric by Global Arena**

	Development	Humanitarian relief	Human rights	Regulatory
Function of rhetoric	<ul style="list-style-type: none"> <li>• Legitimacy for ideological interpretations</li> <li>• Justification for policy interventions</li> </ul>	<ul style="list-style-type: none"> <li>• Internal (identity) and external legitimacy for how politically engaged aid agencies can “do good”</li> </ul>	<p>Iterative</p> <ul style="list-style-type: none"> <li>• Gain third-world recognition</li> <li>• Claim Northern moral high ground</li> <li>• Define rights as human capabilities</li> <li>• Situate human rights in organization practice</li> </ul>	<ul style="list-style-type: none"> <li>• Game the regulatory system</li> <li>• Justify internal (pragmatic) interpretations of legitimacy</li> </ul>
Rhetorical strategies used	<ul style="list-style-type: none"> <li>• Means-ends argumentation</li> </ul>	<ul style="list-style-type: none"> <li>• Identity and definition in argumentation</li> </ul>	<ul style="list-style-type: none"> <li>• Symbolic</li> <li>• Tautological</li> <li>• Ends <i>and</i> means (open-ended)</li> <li>• Pragmatic</li> </ul>	<ul style="list-style-type: none"> <li>• Argumentation by comparison of contested “principles”</li> <li>• Pragmatic argumentation</li> </ul>
Ethical propriety issues	<ul style="list-style-type: none"> <li>• Deductive logic preempts critical examination</li> <li>• Coopted ideas and terms deceptively play on emotions; conceal biases and past failures</li> </ul>	<ul style="list-style-type: none"> <li>• Is rhetoric invited?</li> <li>• Interests disclosed?</li> <li>• Abuse of authority?</li> </ul>	<p>(Specific to function and rhetorical technique—see text)</p>	<ul style="list-style-type: none"> <li>• Tensions between “principles”</li> <li>• “Principles” versus pragmatism</li> </ul>
Virtue; commitment to reflection	<ul style="list-style-type: none"> <li>• Scholars, research institutes critical of development practices</li> <li>• Evidence of reflection is sketchy among development organizations</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence of reflection on conundrums of politically engaged humanitarianism</li> </ul>	<ul style="list-style-type: none"> <li>• Evident in iterative dialectics</li> </ul>	<ul style="list-style-type: none"> <li>• Evident in struggle to reconcile the ideal and pragmatic</li> </ul>

acceptance and “taken-for-grantedness” makes for effective institutional politics, but such tactics, particularly to the extent they deflect attention away from unsuccessful programs, compromise Parker’s standards of reason and transparency (to avoid deception) as ethical tests. As for collective virtue in the international development industry, it can be said that scholars and practitioners have shed light on how the development industry uses rhetorical politics in advancing institutional interests. But it is difficult to determine exactly how these concerns impact the missions and actions of aid agencies—do they enlighten officials about alternative perspectives of human improvement or merely signal the need to revamp argumentative strategy?

Rhetoric in the international humanitarian arena serves to justify agency missions that situate emergency relief in a broader context of political advocacy directed toward alleviating (presumed) root causes of strife. Although perhaps logical in the abstract, agency efforts to balance political advocacy with emergency operations encounter understandable difficulties in concrete situations of hostility or natural calamity associated with human misery. In these turbulent contexts, rhetoric functions not only to legitimize the agency role but also to reaffirm the personal identities of relief workers facing safety concerns, needs for “creature comforts,” and indignities of disrespect from others such as belligerents or aid recipients. At both the agency and individual levels, this rhetoric corresponds to what Perelman and Olbrechts-Tyteca call “identity and definition in argumentation” wherein definitions are not so much determined empirically as construed to explain the existing situation from the standpoint of the speaker (1969, 212–213). This identity rhetoric helps speakers self-deliberate by taking stock of their particular circumstance while conveying it to the audience.

On a general level, ethical concern logically focuses on relationships between relief agencies and the political actors (regimes or policy institutions) that have sway over them, such that the former could commit misdeeds following the lead of their political principals. In these cases, identity rhetoric could justify violating Douglas Parker’s condition of “invitedness” in particular trouble spots where emergency relief might serve as a Trojan horse for spreading ideology or advancing particular agendas. So the ethically competent relief organization uses discretion prudently to provide emergency assistance in ways that do not exacerbate conflict or violence. The imperative of such prudence prompts agency leaders to deliberate over their roles, agency practices, and even the (un)ethical messages that relief workers convey in fields of operation (Anderson 1999, 55–66). Nonetheless, prudence may in some cases guard against overzealous virtue, perhaps to acknowledge that humanitarian workers are human (rather than angels<sup>12</sup>) and are therefore entitled to their human emotions in the midst of difficult work.



Rhetoric has served a variety of functions as human rights have evolved as an international concern over the past four decades. During the 1970s, Third-World societies articulated a "right to development" as symbolic argumentation for inclusion in matters of global finance and investment. Northern development institutions argued that their economic improvement programs *by definition* qualified as human rights initiatives. In response, the human capabilities champions pursued a discourse that recognizes a broader array of rights (including economic, social, and cultural rights as well as civil and political) as both constitutive (ends) and instrumental (means) in human empowerment. Beyond this, what Peter Uvin calls a "rights-based perspective" follows pragmatic argumentation asserting that human rights can be realized *only* if organizations take overt, strategic measures to have people's rights honored as moral claims.

From an ethical standpoint, the contrast between the tautological rhetoric of the Northern development community (arguing that it had been speaking "human rights" all along) and the pragmatic counterresponse by Uvin (and to a lesser extent, by Sen) takes on particular significance. Although the former could be taken on the surface as a self-serving overreach, it more fundamentally reveals a presumptive expectation that the norms it proposes should be universally accepted by acclamation. However, the insertion of pragmatic argumentation (alleging that much human rights talk amounts to rhetorical fluff) redirects discourse to "where the rubber hits the road" and in so doing, establishes a dialectic of critical reasoning concerning the meaning of human rights (see Green and Zinke 1993, 324). In essence, the pragmatic rhetoric in this dialectic challenges the uncontested prerogative of powerful institutions to co-opt human rights in laying claim to the moral high ground and, in so doing, shifts the discourse toward Parker's ethical criteria of reason, reflection, and nonexploitation.

Rhetoric is difficult to trace among the many "moving parts" in the international regulatory arena. At the technical level within networks of regulatory expertise, the language of collaboration and "co-opetition" prevails to establish trust among (otherwise competitive) firms, national representatives, and NGO personnel. However, the more ethically significant discourses parallel the divergent interests of actors participating in this arena and the expectations of global and national audiences. At the heart of these dialogues are the (network-like<sup>13</sup>) global governance organizations or GGOs whose interests involve securing adherence from member organizations and maintaining internal pragmatic legitimacy among those members by applying techniques of restraint in response to nonadherent behaviors. In response, membership in itself constitutes a discourse of responsibility and coherence. Energized by the buzz of principles (transparency, account-

ability, and so forth), some nations attempt to game the system by elevating a particular ideal as trumping others and by forum-shifting that plays GGOs against other regulatory authorities (Braithwaite and Drahos 2000, 26). Some of these parts move in ways that confound global and national communities where collective expectations focus on traditional discourses of rule-compliance and severe sanctions levied for noncompliance. In other words, efforts to conserve internal legitimacy in the international regulatory arena tear at the fabric of external legitimacy in broader national and global communities.

In this arena, the ethical problem of transcendent principles versus situational pragmatics emerges both in the context of conflicting logics of legitimacy (and corresponding modes of rule- and responsiveness-accountability; Koppell 2010) and in the case of national interests exploiting principles to win the regulatory game. Yet as far afield as global regulation may appear from domestic public service, the contradictory philosophies of progressive pragmatism and principled idealism are deeply rooted in early twentieth-century traditions of public administration wherein pragmatic progressive reformers locked horns with idealistic populists. Certain parallels could be drawn between powerful nations' efforts to game the international regulatory system and privileged Mugwumps' initiatives to promote pragmatic management at the displeasure of populists whose idealistic expectations led them to distrust public administrators as much as big business (see Hofstadter 1955, 137; Stever 1990, 41). In the regulatory arena, it becomes evident that the manipulation of "principles" leads to more ethical mischief than does the pragmatic GGO justification for why weak is strong in eliciting adherence from member organizations. Notwithstanding the disconnect between the internal legitimacy that holds GGOs together and outside expectations of a rule-based accountability, the pragmatic explanations of how GGOs achieve coherent global regulation appear consistent with Parker's ethical standards of rhetoric.

This observation generally holds as well once the thick normative textures are peeled away from the international development, humanitarian, and human rights arenas. The rhetoric flowing from principles—whether related to (1) classical economics in international development, (2) *either* neutrality *or* political engagement in relief assistance, or (3) good-governance ideals in human rights—tends to justify agendas in ways that stifle the audience's ability to evaluate the speaker critically. On the other hand, more pragmatic tendencies—as in the rhetoric of self-deliberation or learning about the shortcomings of humanitarian relief, or an action focus on how NGOs actually go about *doing* human rights (instead of merely talking about them)—appear more consistent with Parker's notions of ethical rhetoric. The implications

here are that, among the four international arenas examined, principles rhetoric warrants particular scrutiny and that appeals for “ethical principles” carry no more (but perhaps less) moral weight than those related to utility in particular contexts.

## Conclusion

The Center for Victims of Torture offers the following advice to leaders of advocacy organizations: “Don’t believe your own propaganda” or your opponent’s, and “know the literal terrain upon which you will meet your opponent” (Cornell, Kelsch, and Palasz 2004, 156).<sup>14</sup> While pertinent to organizational rhetoric, these recommendations can inform our understanding of public ethics as well. First, it becomes apparent that, when put into practice, principled ideals can promote manipulative and exploitative opportunism just as convincingly as unabashed expedience. In this regard, discourses about ethics in public arenas would do well to value the idealism–pragmatism dialectic from which the public administration movement emerged. That tension has over the years energized critical dialogues concerning the roles of domestic governmental entities and currently of global organizations. Ethical standards that tilt too far toward transcendent idealism become especially susceptible to exploitation at the hands of the “heresthetically” gifted, those who are accomplished in the art of manipulation. In this regard, rhetorical analysis that focuses on argumentative strategies used—whether means versus ends distinctions, self-identification, tautology, pragmatism, or other modes of persuasion—can hold “taken-for-granted truths” up to critical inquiry.

Second, relentless idealism locks in simplistic and outmoded expectations of propriety that are removed from the changing complexion of public and global affairs. A key observation in this inquiry, for example, relates to global governance organizations that confront external legitimacy problems, *even though* their rhetoric of regulatory adherence appears straightforward and nonexploitative. In other words, what is rhetorically ethical *lacks external legitimacy*, and what is legitimate *may not be rhetorically honest*. By contrast, manipulative justifications in the arenas of development and human rights are more apt to prevail if and when they become assimilated into the taken-for-grantedness of self-confirming idealism. In this chapter, rhetorical analysis helps illuminate the ethical dimension of global organization. Perhaps this approach can be useful as well in scrutinizing contemporary standards of public ethics with particular attention to their latent capacities to promote outside agendas and the legitimacy expectations they reinforce.

## Notes

I extend gratitude to my colleagues Kathleen Watters and Grant Neeley for their comments on early drafts of this chapter.

1. It is worth noting here that reliance on the word *global* can assume strategic relevance in governance discourse. Management theorists Jonathan Gosling and Henry Mintzberg advise business leaders to adopt a “worldly” rather than a “global” mind-set: “‘Globalization’ sees the world from a distance, assuming and encouraging a certain homogeneity of behavior . . . A closer look reveals something rather different. Far from being uniform, this world is made up of all kinds of worlds. Should we not, then, be encouraging our managers to be more worldly, more experienced in life, in both sophisticated and practical ways? In other words, should we not be getting into worlds beyond our own—into other people’s circumstances, habits, cultures—so that we can better know our own world?” (2003, 58–59). But in *The New Rhetoric*, Perelman and Olbrechts-Tyteca suggest that abstraction (such as a “global” essence) serves as a rhetorical strategy for advocating new values: “Perhaps in the West the need for change has been the stimulus for argument of abstract values, as such argument is better suited for raising incompatibilities. At the same time, the confusion of these abstract notions would allow us, after these incompatibilities have been raised, to form new concepts of these values. An intense activity in the realm of values is thereby made possible; they are constantly being recast and remodeled” (1969, 79).

2. However, this terminology has its critics who call attention to substantial deprivations among subpopulations in so-called affluent, “developed” societies; for example, see John Gaventa’s (2002) discussion of “crossing the great North-South divide” in U.S. society.

3. Here I follow Louis Howe’s understanding of “neoliberal” programmatic intervention as reflecting an ideology whereby “the purpose of the state is to ensure the continual thriving of the economy; that is, the economy is itself conceived here a form of government” (2006, 432). Subsequent references in this chapter to “classical liberal ideals or ideology” more closely relate to neoliberalism (supporting a policy agenda for a flourishing economy) than classical liberalism per se.

4. The *technical* narrative of development elevates the work of expert intervention above and apart from the political motives of some stakeholders such as governments or bilateral donor organizations (see Bryld 2000; Storey 2000). With regard to *decentralization*, funding institutions advance the neoliberal change agenda through specific programs that call on governments—either through legislation or other means—to devolve policy authority as a condition for development aid (see Fowler 1992). In addition to urging governments to decentralize power, neoliberal funding institutions call on national governments to reform their *regulatory policies*, usually in the direction of scaling them back. In the neoliberal change narrative, *civil society organizations*—a wide assortment of NGOs and grassroots groups involved in public service—are viewed as principal vehicles for democratizing societies. Yet if NGOs build credibility through their involvement as public service providers, they risk their autonomy in relation to funding institutions or governments that contract with them for services. Some critics refer to NGOs’ roles as service providers in civil society as “gap filling,” suggesting that civil society organizations “let governments off the hook” by assuming responsibilities for costly and challenging public functions (Whaites 1996). Funding institutions have looked to the prevalence of *private partnership* arrangements in the West as apt development models.

5. As one example, Cornwall and Brock elaborate the rhetorical tactic of linking buzzwords together to achieve consensus and “taken-for-grantedness” as follows: “Particular combinations of buzzwords are linked together in development policies as ‘chains of equivalence’ or words that work together to evoke a particular set of meanings . . . As a word comes to be included in a chain of equivalence, those meanings that are consistent with other words in the chain come to take precedence over other, more dissonant, meanings” (2005, 4).

6. Concerns about how humanitarian aid agencies relate to each other as well as multilateral organizations are energized by controversies related to a UN-sponsored initiative to integrate various NGO efforts under a “common institutional framework . . . to coordinate the efforts of UN agencies, NGOs, and other components of the ‘humanitarian community’” (*Ethics and International Affairs* 2004, 1).

7. However, in recent years, humanitarian organizations have expressed growing dissatisfaction with the convergence of relief efforts with state interventionist agendas as endangering aid workers by raising suspicions that they are partisans working to further the political agendas of intervening states. In fact, in *To Stay and Deliver*, a recent report on humanitarian work in settings of “protracted conflict and insecurity,” the UN Office for the Coordination of Humanitarian Affairs (OCHA) explains: “Providing humanitarian assistance amid conflict has always been a dangerous and difficult endeavor; however, over the last decade aid worker casualties tripled, reaching over 100 deaths per year . . . Attacks in some of the settings have also grown more lethal and sophisticated and the number of killings has risen dramatically” (2011b, 1). For OCHA and seventeen Western donor governments, the remedy for humanitarianism’s identity crises and security dilemmas involves strengthening the coordination of emergency humanitarian assistance of the United Nations. Specifically, the OCHA endorses a “back to basics” agenda embodied in what it calls the “Principles and Good Practice of Humanitarian Donorship” that (1) reassert the objectives and definitions of humanitarian actions, (2) establish general principles that support the UN’s enhanced roles in coordinating humanitarian action, and (3) articulate “good practices” in donor financing, management, and accountability (OCHA 2011a). Among others, one goal of this emerging policy discourse is to disentangle relief efforts from national interests.

8. Uvin is currently serving as dean of the Fletcher School of Diplomacy at Tufts University. His passion here relates to his experience working in Rwanda during the run-up to genocide in 1994. In *Aiding Violence*, he vents frustration as to why the multitude of development NGOs working there, that considered Rwanda as a model of development in Africa, could not anticipate the atrocity. Specifically, Uvin asks, “What does development mean if a country that is seemingly succeeding so well at it can descend so rapidly into such a tragedy? Why did those of us who worked there have no idea this was coming? . . . What was the role of development, as conceived and implemented in Rwanda, in the unfolding of the process that led to the horrible events the country went through? What, if anything, could the development community have done to stop Rwanda’s slide to self-destruction?” (1998, 1–2).

9. Regarding argumentation, Sen refined the chapters of his book from his lectures to World Bank economists in the fall of 1996 as a visiting fellow there; in the preface, he confesses, “The World Bank has not invariably been my favorite organization. The power to do good goes almost always with the possibility to do the opposite, and as a professional economist, I had occasion in the past to wonder whether the Bank could not have done very much better . . . All this made it particularly welcome to have the

opportunity to present at the Bank my own views on development and on the making of public policy" (1999, xiii).

10. Practical implications of Uvin's rights-based approach include knowing the human rights law machinery, emphasizing organizational capacity-building, promoting advocacy, focusing on violations, taking an inward look into organization values and practices, focusing on the rule of law, reconceptualizing the overall aims of agencies, and choosing new partners (2004, 122–166).

11. The term *co-opetition* emerges in a variety of business ethics contexts (e.g., Chattopadhyay 2001; Daboub and Calton 2002; Dagnino and Padula 2002). An online interview relating to software marketing includes this exchange: "I just don't understand why a lot of companies and papers think that [firms] are pitted against each other. The single most aggravating statement I ever hear is when a company's #1 goal is 'Increase shareholder value.' Wow. I hate those three words." This comment drew the following response: "It's because for the traditional software 'marketplace' it is about competition . . . We speak a completely different language, we speak a language of 'co-opetition.' I think Paul's imagery of a community of farmers helping each other out at a barn raising, has a lot of appeal. There are probably some other farming analogies that we could use in talking points." "Exclusive Fedora Interview," [www.redhat.com/archives/fedora-marketing-list/2008-May/msg00344.html](http://www.redhat.com/archives/fedora-marketing-list/2008-May/msg00344.html).

12. In the words of two ethnographic researchers, "Humanitarians are not heroes. Neither are they selfish vultures. Nor indeed do they correspond to any other stereotype concocted by friends or foes. Accounts of everyday NGO practices and dilemmas correct blind expectations, expose uncritical admiration, and put unrealistic critiques into perspective" (Fernando and Hilhorst 2006, 301).

13. For the sake of analysis in this inquiry, it is assumed that Koppell's GGOs are roughly analogous to Provan and Milward's "network administrative organizations." Both are responsive to the needs of "organization/participants" (corresponding to firms adhering to GGO rules) and accountable to the global "community" (Provan and Milward 2001). Also, Human and Provan's (2000) treatment of internal and external legitimacy in networks appears relevant to GGOs.

14. The Center for Victims of Torture was established in Minneapolis in 1985 to help torture survivors rebuild their lives. The quote is attributed to ancient Chinese military leader Sun Tzu (Cornell, Kelsch, and Palasz 2004, 156).

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Conclusion

*Richard K. Ghere*

Among the ethically pertinent news stories that unfolded as this volume took shape, two clearly illustrate how public ethics connects to government or system legitimacy:

- Revelations about the 2010 Government Services Administration (GSA) scandal wherein the agency spent \$823,000 for supposedly “in-service training” that amounted to a junket including “a hot tub, a mind reader, a clown, and sushi—all under the administration of the acting commissioner of the agency’s Pacific Rim region” (Marinucci 2012)
- Media coverage of the “Stuxnet” controversy that surfaced from leaked information about the U.S. defense establishment’s ongoing cyberwar project—backed by the Obama White House—to attack Iran’s nuclear facilities with a computer worm

Each compromises legitimacy in a different way. Clearly, the GSA fiasco eats away at public confidence in public agencies. In that regard, it was not surprising that the media most critical of government (e.g., the *Washington Times*) covered the scandal more often and in greater lengths than others (e.g., the *Washington Post*). But it can be said that citizens of almost all political persuasions found this behavior—presumably the poster-child of Carole Jurkiewicz’s ethical dysfunction (Chapter 2)—a fundamental breach of public trust.

This, however, was *not* the case with Stuxnet. Here opinion varied across the board in regard to the (im)propriety of the defensive (or offensive) tactic as well as the leaks of defense-related information—even though many faulted federal agencies for poor security and some accused the administration of leaking information for political gain. Yet from an institutional standpoint, opportunities for the tactic and leak alike emerged from a changing information

technology environment. Similarly, Gutenberg's technology enabled pamphleteering that supported the early sixteenth-century Protestant Reformation and late eighteenth-century American Revolution. About the former, a church historian remarks, "Luther was a printer's dream. [While the printer] would be setting the beginning of a pamphlet in the monastery basement, Luther was upstairs writing the end of it" (Nestingen 2003, 38)—technology, dissent, and challenged legitimacy.

The chapters in this volume speak to why legitimacy matters both in the conduct of ethics research and *doing ethics* on the job. Concerning the latter, (too) much has been made about the supposed disconnect between theory and the real world, so this chapter (in the section to follow) emphasizes how public administrators do ethics by working through tough institutional problems. A subsequent discussion assesses how a focus on institutional legitimacy affects theoretical coherence in public ethics research. This chapter (and book) closes with concern for how public administrators intent on restoring legitimacy in a time of broken politics can remain "consistent enough to deserve ethical respect" (Bailey 1965, 290).

### **From Institutional Legitimacy to Ethics on the Job**

The connection between institutional legitimacy and a leader's pliability is anything but new—as policy scholar Aaron Wildavsky once discovered. Intrigued by a Sabbath service and "aided by the Gideons who see to it there is a Bible in virtually every hotel room in America" (1984, 4), he set out to write about that early institutional leader, the Old Testament Moses, who was browbeaten into taking on incredible odds in coping with a threatening external, political regime and a fearful, and often fickle, internal culture.

In his subsequent book *The Nursing Father: Moses as a Political Leader*—less well-known than his *Politics of the Budgetary Process* (1964)—Wildavsky discusses how Moses began his career as a "passive leader of a passive people" under the Egyptian regime of slavery:

With a passivity bordering on aggression (Why me!) Poor me! Woe is me!), Moses bargains [with the Almighty] for greater resources, commensurate with his task. The complaints of modern administrators about insufficient authority to fulfill their responsibilities receive a supporting echo. But it can never be. Authority has got to be less than responsibility or the task would be completed before it was begun. Closing that gap is what leadership is all about. (1984, 60)

In the context of this volume, we assert that closing that gap is largely what *doing ethics* is all about. Moses had to learn institutional leadership on the

job amid the government's (i.e., Pharaoh's) suspicions. Prudent leadership through these adversities demanded "foresight [over] the long term" (Dobel 1999, 199–201) to weigh survival strategies to ease tensions in the short term against the risks of compromising opportunities to improve the quality of public life in the future. Throughout his book, Wildavsky illustrates Moses's pliability in having negotiated a number of stylistic "U-turns" in his leadership as political cultures shifted from slavery to anarchy (among his followers), to egalitarianism, and ultimately to hierarchy.

Many centuries later, another Moses—a builder of large-scale urban projects in America—served as "an exemplar, but not of morality." In their account of Robert Moses's inability to connect his public idealism with legitimizing strategies to address institutional power, Terry Cooper and Jameson Doig quote biographer Robert Caro's observations of how a 1917 mayoral victory by a Tammany Hall candidate sapped Moses's idealism:

When the curtain rose on the next act of Moses' life, idealism was gone from the stage. In its place was an understanding that ideas—dreams—were useless without power to transform them into reality. Moses spent the rest of his life amassing power, bringing to the task imagination, iron will and determination. And he was successful . . . For once Bob Moses came into the possession of power, it began to perform its harsh alchemy on his character, eating away at some traits, allowing others to emerge. (1992, 112, 132, quoting Caro 1974, 5, 241)

Cooper and Doig conclude that Moses's elitism emerged as a predominant character attribute: "Faith in rationalism had given way to belief in the superior judgment of the few able people who rightfully impose their will on the masses" (1992, 133).

Fortunately, we have a growing compilation of commentaries about administrative exemplars whose attributes and actions more closely align with the earlier Moses. Notably, Terry Cooper and Dale Wright's edited volume *Exemplary Public Administrators* (1992) consists of chapters on a number of distinguished public leaders—consumer advocate Harvey Wiley, career public servant Paul Appleby, soldier and statesman George Marshall, champion of the National Park Service George Hartzog, head of the Tennessee Board of Pardons Marie Ragghianti, and several others—who crafted strategies for dealing with formidable institutional forces that enabled them to do ethics in pursuit of significant accomplishments. Added to these accounts are chronicles of morally distinguished careers in public service appearing in the journal literature, particularly those appearing in the exemplar section of *Public Integrity*—for example, career sketches on

Elliot Richardson (Pfiffner 2003) and George Marshall (Pops 2006). And in *Mission Mystique* (2011), Charles Goodsell's portrayals of committed public executives—such as Sargent Shriver of the U.S. Peace Corps, Jake Jacobsen of the Mecklenburg County Department of Social Services, and Steven Flaherty of the Virginia State Police—add to the record of exemplars who do ethics to conserve institutional integrity.

The overarching point here is that conversation about significant institutional forces—such as the debilitating, broken politics described in Chapter 1—should not be taken as some esoteric concern that remains far removed from the real world of public managers. Rather, these institutional matters indeed shape the real world of public service. Few analyses of real-world administrative work demonstrate this assertion with greater clarity than does Norma Riccucci's (1995) comparative assessment of six effective "execucrats" in the federal government. Although Riccucci's study does not focus specifically on ethics, the personal profiles she compares reveal conspicuous linkages between determination to work with complex, highly politicized, and often ill-defined institutional pressures and ethical competencies that meld personal courage with dedication to the public trust. Table 16.1 (see pages 366–367) depicts how each of Riccucci's "execucrats" worked effectively with one or more of the four particular institutional themes outlined in Chapter 1 of this volume: (1) the boundedness of ethics, particularly in ambiguous contexts; (2) the power forces around (and within) institutional legitimacy—and their exploitative potential; (3) the value of institutional learning and understanding; and (4) moral personhood and prudent judgment for ethical discernment.

In regard to *bounded ethics*, four of these administrators take deliberate, ethical steps that lead to policy accomplishment in dealing with ambiguities related to uncertainty about how some household chemicals affect the ozone layer (Claussen), political sensitivities related to the contentious matter of stipulating who qualifies as a minority owner eligible for Small Business Administration (SBA) benefits (Marica), what constitutes an appropriate national health commitment to all mothers and children (Hutchins), and misunderstandings about HIV/AIDS, particularly in African-American communities (Gayle). In like fashion, it appears reasonable to expect officials and university representatives in the National Collegiate Athletic Association (NCAA) to come to grips with the vagaries of what constitutes the amateur student-athlete ideal amid the rampant commercialization of college sports (see Dobel, Chapter 7). Similarly, there is reason to judge leaders of nonprofit and nongovernmental organizations—whether they operate in the local community or on a global scale—as to whether they are as accountable to the vulnerable as to donors (see Ghere, Chapter 15; Kearns, Chapter 13).

Although all of Riccucci's "execucrats" responded to significant *power forces* in their environments, two displayed particular courage in advancing their principled position in the face of opposition from their own administration. William Black had to contend with Reagan administration ties to the savings and loan industry, and Eileen Claussen had to argue the case for international regulation of the ozone layer against the sovereignty concerns of the same presidency. A third, Ambassador Edward Perkins, championed the antiapartheid cause amid the white governmental power structure in South Africa. Readers are invited to determine what distinguishes Black's and Claussen's actions from those of O'Leary's government guerrillas (Chapter 10) . . . stature of position, better developed ethical competence, or something else? And to the extent that those power forces reflect private commercial interests, these two "execucrats" appear to assume the responsibility of attending to the legitimacy of "publicness" (Frederickson, Chapter 5).

Riccucci's profiles affirm that "execucrats" are competent *institutional learners*. In particular, Ambassador Perkins developed clear lines of communication to understand differing perspectives from various sides of the apartheid issues, and Steve Marica took steps to identify SBA program weaknesses and vulnerabilities. Dissecting institutional learning further, this ethical competence could involve understanding how administrators "know what they know" (Cox and Pyakuryal, Chapter 11), how organizations rely on administrative ethics as means of control (O'Kelly and Dubnick, Chapter 4), how that control orientation through ethics can paradoxically lead to ethical dysfunction (Jurkiewicz, Chapter 2), the psychological as well as political logics at work in defining public ethical standards (Stark, Chapter 9), the nature of power conveyed through rhetoric and discourses (Ghere, Chapter 15), and the value of reflection on ethical conundrums from multiple perspectives (Bowman and West, Chapter 8).

*Moral personhood* refers to one's role as a significant actor capable of changing institutions and environments, presumably for the better. Such individuals are generally willing to assume personal risks on behalf of their ethical discernments; as shown in the table, Dr. Vince Hutchins comments, "part of the fun of working in government is to see how far you are willing and able to go . . . But you must be willing to put your wrist out and get it slapped." Dr. Hutchins's "fun," or enjoyment in public service (and Dr. Gayle's as well), reflects the moral attribute of optimism that accompanies pliability (Bailey 1965). But especially significant here is the professional ability to demonstrate ethical commitment by drawing upon one's cognitive skills in framing normative ideas in ways that affect institutional contexts. In this sense, "standing up" to power (Black), "proving oneself as international leader" (Claussen), "protesting publicly" (Perkins), "inspiring followership" (Marica)



Table 16.1

## How Federal "Execucrats" Do Ethics in Response to Institutional Problems

Institutional theme	"Execucrat"	Doing ethics on the job
The boundedness of ethics, particularly in ambiguous contexts	<b>Eileen Claussen</b> , director of EPA's atmospheric programs in Reagan and George H.W. Bush administrations; worked on climate effect issues leading up to Montreal Protocol	Dealt with ambiguities related to effects of chlorofluorocarbons on the ozone layer; grappled with the comparative merits of international regulation with market-friendly strategies
	<b>Steve Marica</b> , assistant inspector general for the U.S. Small Business Administration (SBA)	Worked through the ambiguities of what <i>minority</i> means regarding SBA minority-ownership section 8(a) programs connected with the 1986 Wedtech scandal
	<b>Dr. Vince Hutchins</b> , director of the Healthy Mothers, Healthy Babies Coalition (HMHCB), a public-private partnership (1977–1992)	Determined what constituted an adequate national policy to address the health and well-being of all mothers and children during an era of cutbacks imposed by the Reagan administration
	<b>Dr. Helene Gayle</b> , an epidemiologist from the U.S. Centers for Disease Control and Prevention (CDC)	Assumed global role in preventing AIDS, for which there is no known cure; dealt with misunderstandings in the black community concerning AIDS as a "white person's disease" and gender responsibilities for safe behaviors
	<b>William Black</b> , hired in 1984 as the litigation director for the Federal Home Loan Bank Board; reregulated the savings and loan industry in response to the "Keating Five" scandal	Faced power interests of the S&L industry, the Reagan administration, and congressional leaders; blew the whistle in the media, standing up to Kenneth Keating (S&L owner) and the five U.S. senators implicated in the scandal
The power forces around (and within) institutional legitimacy—and their exploitative potential	<b>Eileen Claussen</b>	Had to argue her position for international regulation against administration pressures
	<b>Edward J. Perkins</b> , U.S. ambassador to South Africa whose efforts led to the end of apartheid laws	"Establish[ed] dialogue with black South Africans, including banned groups . . . firm with white officials; vigorously [supported] enforcement of economic sanctions in South Africa" (229)

The value of institutional learning and understanding	<b>Edward J. Perkins</b>	Endeavored to know everybody from all sides and "develop clear and open lines of communication with them . . . Because of his willingness to reach out and actually listen to them, black South Africans became very receptive to [him]" (223)
	<b>Steve Marica</b>	"Improve[d] the SBA's public image [by developing] new training programs for SBA employees . . . Marica also began training field managers on the recognition and reporting of internal weaknesses and program vulnerabilities identified by investigations" (224)
Moral personhood and prudent judgment for ethical discernment	<b>William Black</b>	Stood up to Keating and the five U.S. senators implicated in the scandal
	<b>Eileen Claussen</b>	"Claussen has proven herself to be a world leader in environmental affairs. Her political, technical, and managerial skills, to name a few, have contributed to her success" (223)
	<b>Edward J. Perkins</b>	Protested publicly against new apartheid laws, galvanizing events that "established his credibility with South African leaders and the black press" (223)
	<b>Steve Marica</b>	Demonstrated "strong sense of commitment to equity and fairness; high moral and ethical standards; creative; . . . inspires loyalty; inspires followership; establishes climate of trust" (228)
	<b>Dr. Vince Hutchins</b>	Was willing to take personal risks . . . on behalf of the vulnerable. "Part of the fun of working in government is to see how far you are willing and able to go . . . But you must be willing to put your wrist out and get it slapped" (225-226)
	<b>Dr. Helene Gayle</b>	A CDC colleague noted, "the thing that men and women of all races and cultures should know about Helene is that she is an excellent example of a dedicated scientist and public servant. She truly enjoys working for the government and she has made enormous contributions to our efforts to fight AIDS" (226)

*Source:* Adapted from Riccucci 1995 with author's permission.

all convey the efficacy of cognition in making sense of what institutions are all about—and in a normative vein, what they *ought* to be all about.

In regard to what Richard Scott calls the “three pillars” of institutional life (1995), conversations about public ethics are more apt to focus on the *normative* and *regulative* than the *cognitive*, the ability to frame and convey representations of ideas—for example, exactly what values (the normative) and rules (the regulative) actually *mean* in particular contexts. In regard to ethical leadership, cognitive representations frame judgments that matter—that is, make the difference between an ethically dysfunctional and an ethical organization (Jurkiewicz, Chapter 2) and between priorities for universal moral standards vis-à-vis the ethics in close-knit relationships (Schwartz, Chapter 3). And as O’Kelly and Dubnick suggest (Chapter 4), institutions are often shaped by cognitions in terms of the messages communicated through metrics (e.g., reporting routines and performance measurement) to convey expectations seeking to “control the memory of the institution’s members.” Thus, our assertion extends full-circle: institutional concerns and real-world management *connect* because (among other reasons) managers convey what organizations mean, for better or worse, on a daily basis.

### **Reconsidering Theoretical Coherence . . . with Attention to Legitimacy**

In a commentary that compares the contract of a big-name football coach with that of his predecessor (Jim Tressel) fired in an NCAA rule violations scandal, a sports writer relates the following:

[Jim] Tressel’s contract also insisted that he follow NCAA regulations, albeit in fewer words than [Urban] Meyer’s does . . . But Tressel didn’t set out to break rules. His sins came in reaction to a situation that wasn’t of his own creation, and he mistakenly thought he could sweep the mess under the rug and move on. A subsequent lie to the NCAA about his knowledge of the incident compounded it—he gets no credit for his deception here—but the point is, he might have done the same thing if his contract had included 100 pages of warnings. “[Tressel] reacted to the circumstances,” [the athletic director] said. He acknowledged that Tressel reacted the wrong way, but not necessarily because he’s a guy prone to cheat. “Mistakes are made, [i]t’s how you respond to them.” (Hunter 2012)

Following Carolyn Whitbeck’s logic in her *Hastings Center Report* essay (1996), Tressel’s faults may have related less to poor judgment than to “design failure” in not crafting a response to an ambiguous, dynamic problem concerning student-athletes in violation of NCAA rules. From Whitbeck’s perspective,

Jim Tresselt could be better understood as a moral agent charged not merely to make a moral judgment (i.e., “no, that is ethically wrong” or “yes, it is justifiable”) but to “*devise possible courses of action as well as evaluate them*” (9; emphasis in original). Much of her discussion focuses on an analogy between product design in the field of engineering (e.g., designing a small child’s car seat that can be used on a commercial airplane) and reasoning in developing viable responses to moral problems—that is, “doing ethics.”

So in these times of broken politics and rampant commercialism that degrade public life, attention should be directed toward how and how well moral agents design responses to problems in ways that conserve and/or restore legitimacy. Typically, such design efforts are clearly bounded as Frederickson (1993) observed in *Ethics and Public Administration* by legislation and budgets as well as by the forces of political polarization and commercialization that divide Americans. An accompanying question—the focus of this section—concerns whether an emphasis on conserving or restoring legitimacy reinforces the existing streams of public ethics theory and research or pushes them in different directions. Generally, the position taken here is that these recognized areas of ethics research serve well, provided that they are amenable to a theoretical framework that centers on *legitimacy* if the question at hand centers on the problem of *societal trust*. In such cases, for example, it could be helpful to redirect Terry Cooper’s first question (*what are the normative functions . . . ?* [2004, 396]) to consider how, if at all, the normative foundations relate to administrative efforts to restore legitimacy.

As for the “not at all” position, it could be that restoring or conserving legitimacy is fundamentally “design work” within the (binding) parameters of the problem. But the stronger case is that the normative foundations (*all* of them) not only guide judgments when they are needed but serve as clear warrants for engaging in the tough design work that (1) contends with ambiguity—for example, what “conflict” and “interest” actually mean (Stark, Chapter 9); (2) “names” the problem—for example, a “beleaguered ideal” (Dobel, Chapter 7) or perhaps the degradation of another public ideal or institution—that calls out for restorative design work; or (3) develops one of various feasibly acceptable (rather than *the* acceptable) action design(s) that can help conserve or restore legitimacy. With regard to particular normative foundations, such design work is largely premised on *virtue* that urges one to act in prudent and exemplary ways beyond the reductionist limits some would impose in the name of ethics. Nonetheless, the other foundations underwrite these labors of restorative design as well—for example, the regime values of “freedom, equity, and property” provide the quality standards for desirable work. Similarly, the warrant of social equity appeals to designs that counteract the stratifying forces of commercialization and privatization—for example, those leading to what Michael

Sandel calls the “skyboxification” of the common experience around sports (2012, 172–176)—to reestablish various facets of public life.

Finally, it is worth noting that many of the chapter contributions in this volume deal with restorative work (or at least the constraints encountered along the way), regarding, for example, ethically functional organizations (Jurkiewicz, Chapter 2), an awareness that ethics measures exert power in organizations (O’Kelly and Dubnick, Chapter 4), more efficacious military contracting (Anechiarico and de Graaf, Chapter 6), the value of multiple perspectives in reflection (Bowman and West, Chapter 8), tacit knowledge acquisition as a synthetic rather than analytic pursuit (Cox and Pyakuryal, Chapter 11), the need for nonprofit organizations to counterbalance private sector expectations (Kearns, Chapter 13), and attention to the power of rhetoric in global (and other) organizations (Ghere, Chapter 15). As a general proposition, it could be said that subsequent ethics research could be deliberately attentive to the various normative foundations as correlates of (that both call for and are reaffirmed by) proactive administrative efforts to rebuild institutional legitimacy and public life.

Moving from legitimacy concerns within our own polity, we might wander into the global context to wonder about restorative work that may be needed in other societies—or in regard to how agencies of the U.S. government and other Western aid institutions “do good” around the world. Permit me to explain how these concerns derive from Terry Cooper’s original question: *How do American administrative ethics fit into a global context?* (2004, 399). In sensitively probing the global implications of American ethical norms, Cooper implicitly touches on legitimacy questions both in reflecting on the appropriateness of transporting our values elsewhere and musing as to whether globally espoused values (self-determination, freedom, honesty, trust, and stability) that he and Diane Yoder demonstrated in research (2002) are enacted. Along these lines, he illustrates the legitimacy problem that the People’s Republic of China confronted in 2003 by initially concealing information about the SARs outbreak (Cooper 2004, 400). In this volume (Chapter 14), Yoder and Cooper address social construction processes through transnational coalition-building that may lead to a convergence of ethical standards among public managers on the African continent.

Yet from there, it makes some sense to shift the onus of legitimacy back onto the United States and Western institutions—such as the World Bank, International Monetary Fund, and regional development banks—in examining whether the program logics and implementation specifics of international assistance interventions live up to either our administrative ethical norms or the core values (identified above) that global societies appear to share. Moreover, researchers could determine whether or to what extent the forces that

have degraded *our* public life—namely strident ideology and the New Public Management (NPM) enthusiasm for privatized governance—have crept in to how we provide development and humanitarian assistance.

We could ask, for example, how the terms of conditionality by which we determine who is worthy of assistance align with our norms and shared core values (see Yoder and Cooper, Chapter 14). As one scholar of development policy explains, “Conditionality is about shortcuts and absolute power, the at-first-sight and attractive idea that ‘our’ money can function as a lever to force things in favor of things we care about” (Uvin 2004, 77). These value questions become more acute when the powerful nations and institutions offering assistance break their own rules and standards of conditionality in preference for recipient nations or ethnic groups that are “more important” in global markets, in supporting military campaigns (see Marriage 2006), or in supplying natural resources (Yoder and Cooper, Chapter 14). These humanitarian conundrums have been characterized as “the dark sides of virtue” that are widely acknowledged and justified by such clichés as “You can’t make an omelet without breaking a few eggs,” “If you can’t stand the heat, get out of the kitchen,” and “It’s two steps backward for every one forward” (Kennedy 2004, xix)—the creative destruction rhetoric familiar to critics of the NPM (Frederickson, Chapter 5). A recent characterization of humanitarianism as “in a world of hurt” alludes to its identity crisis brought on by the entanglement of humanitarian aid within military campaigns such as in Afghanistan and Iraq (Barnett 2009). These realities call attention to another beleaguered ideal (or for some, an outmoded ideal; e.g., Vaux 2007, 7–11)—the ideal of humanitarian neutrality that Swiss businessman Henry Dunant established in the founding of the International Committee of the Red Cross midway through the nineteenth century.

A fitting inference here is that there is much to occupy ethics researchers intent upon exploring the global context beginning with Cooper’s specific question about *how American norms fit . . .* but then extending into international policy-making activities, especially those animated by nationalistic or global governance interests. Some of the chapter contributions in this volume pursue these trajectories—for example, those relating to how U.S. democracy is currently viewed by other societies (Adams and Balfour, Chapter 12), how thin universal norms affect thick ethical contexts (Schwartz, Chapter 3), how accountability mechanisms exert power (O’Kelly and Dubnick, Chapter 4), how NPM values resonate in military contracting (Anechiarico and de Graff, Chapter 6), and how international aid agencies succeed politically by framing policy discourses strategically (Ghere, Chapter 15).

Although Cooper’s third big question asks *how organizations can be designed to support ethical conduct* (2004, 401), it drills down into a funda-

mental dilemma of professional ethics. On the one hand, professionals *need* authoritative rules or guidelines to underscore the legitimacy of the profession; but on the other, those strictures turn around to set expectations about the nature of the profession and the societal stature of those practicing it. Thus, narrow compliance-oriented designs project strong professional identity but a diminished role in affecting public outcomes. Ethics of this nature tend to emphasize “small things” and what should *not* be done (Frederickson, Chapter 5) rather than *doing* ethics in pursuit of the big, problematic issues. And if (as O’Kelly and Dubnick suggest in Chapter 4) ethics and accountability designs convey or redirect power in the organization, they can be readily commandeered by those who would render the profession—in this case, public management—impotent. Surely, the question is one of balance and priority; it is naïve to envision ethics approaches that are devoid of some degree of compliance. Perhaps innovative organization designs could offer sufficient latitude for public servants to exercise professional consciousness and undertake the design work needed to strengthen public institutions and reinvigorate civic life.

In this sense, Cooper’s question (stated above) could be rephrased as *how can organizations be designed to conserve or restore legitimacy?* Nonetheless, his discussion of the original question still responds aptly to the query as amended here. First, *dissent channels* are imperative in supporting the courage of conviction without the fear of recrimination. As Rosemary O’Leary affirms in her conclusion to *The Ethics of Dissent* (2006, 90–120), public organizations can channel dissent in ways that bolster professional courage within the parameters of the possible without domesticating the guerrilla impulse. Such channels build tacit knowledge in the organization (Cox and Pyakuryal, Chapter 11), accommodate the psychological dimensions of decision-making (Bowman and West, Chapter 8), and foster ethicality within the organization (Jurkiewicz, Chapter 2).

Second, organization designs can promote efforts to strengthen public sector legitimacy by extending (rather than constricting) the base of knowledge accessible to professional administrators—or in other words, widening rather than narrowing their vision (see O’Kelly and Dubnick’s reference to Foucault in Chapter 4). Cooper laments how rigid hierarchical structures limit knowledge and authority in assuming ethical responsibility: “I have seen public administrators on the verge of tears years after they faced the bleak choice of rectifying a wrong or retaining their jobs, and then had been vilified by attempting to act ethically” (2004, 402). Doing ethics, however, depends upon knowledge-sharing through mentoring relationships and collaborative interactions among professionals and other stakeholders in the community. In short, viable organization designs should guard against information-hoarding and



managerial tendencies to rely (or obsess) upon a particular type or source of information (i.e., quantitative performance data) to the exclusion of others. In this volume, several chapters address the utility of a broadened knowledge base in reference to strategies for building a well-functioning ethical organization (Jurkiewicz, Chapter 2), the power implications of ethical designs (O’Kelly and Dubnick, Chapter 4), the psychological as well as political derivations of ethics standards (Stark, Chapter 9), and the acquisition of tacit knowledge (Cox and Pyakuryal, Chapter 11).

If we begin with the premise that public service is for flesh-and-blood people (rather than for abstract ideals), there might be cause to put Cooper’s concern for when and how to treat equals and unequals temporarily on hold. Specifically, he asks, *When should we treat people equally in order to treat them fairly, and when should we treat them unequally?* (2004, 402) Fundamentally, the question presumes the imperative to attend to people and then extends to dealing with diverse people and their particularistic needs and demands. Michael Sandel argues that in the United States human interactions now take place in a market *society* beyond the market *economy* as we have conventionally understood it. He points out that in their portrayals of a market *economy*, economists deduce that transactions are value-neutral in purely instrumental markets. But he rejects this conclusion by elaborating upon “the commercializing effect” in the market *society* whereby “the introduction of incentives and market mechanisms can change people’s attitudes and crowd out nonmarket values” (2012, 121). If this argument is accurate, we can presume that the particularistic (skybox-like) demands of the affluent will be satisfied by the marketplace. But do the needs of others matter? If so, concern for legitimacy would have us step back momentarily from the equals/unequals matter to reexamine fundamental commitments to *people* per se—as opposed to such abstractions and ideologies as “the free market,” “originalism,” “freedom from governmental interference,” or “free speech” (in its varied manifestations). Such a concern could reframe Cooper’s equity problem as *how do we put the emphasis back on treating people, and how can we rekindle the common hearth?*

Reference to the “common hearth” borrows from Patrick Dobel’s sensitivities regarding how public officials attend to cohesive ethnic groups (some of which have become particularly visible as a result of recent immigration controversies)—in effect, “the others” in our communities (Dobel 1999, 147–169). My concern certainly includes these groups but steps back to reestablish that common hearth for significant segments of our population that are falling through the cracks of a market society. Few issues of moral fairness appear more compelling for public ethics researchers’ scrutiny at this time. This volume includes concern for how people are treated—the

student-athlete in the face of big-money college sports (Dobel, Chapter 7), the vulnerable served by nonprofit organizations that are pressured to become more business-like (Kearns, Chapter 13), and the poor in various international locales whose boats are not necessarily lifted, but are perhaps imperiled, by global development and other governance policies (Ghere, Chapter 15).

So do Terry Cooper's four big questions (posed in 2004 to encourage theoretical coherence) speak to concerns about legitimacy? Clearly, they do. Obviously, virtually *all* in public ethics touches upon legitimacy because, among other reasons, those ethics derive from societal norms. Nonetheless, academic researchers and managers on the job alike would do well to make bright-line distinctions between situations that are aptly understood and resolvable by best-practice ethics designs and others that straddle the fissures of societal polarization and distrust. In the latter case, researchers might incorporate legitimacy frameworks that have typically guided comparative studies of systemic corruption in other national settings (see Rothstein 2003). Public managers who recognize this bright line would be less likely to be blindsided by the wicked problems that breed alienation and distrust. Instead, they would be prepared to draw upon professional competencies to deal with the tough but fuzzy dilemmas that call for doing ethics, or design work, as distinct from more traditional compliance and control issues.

### **“Consistent Enough to Deserve Ethical Respect”: Some Closing Words**

A city manager in Dayton, Ohio, received a letter from a citizen of the People's Republic of China expressing a desire to move to that city in response to the municipality's "immigrant-friendly" policy initiative to attract industrious and community-aware immigrants as residents. This program materialized as the city manager and the program's coordinator shepherded a media effort to garner favorable opinion in the community and internal support among city employees. In the face of a contentious national debate about immigration and the status of the undocumented, the city manager sidestepped the legality issue by *not* associating the term *illegal* with *immigrant* and *not* explicitly limiting the city's welcome to those with papers. Both the manager and the coordinator expressed their justifications in a newspaper roundtable with citizens and business leaders. A citizen living in a declining neighborhood that has attracted ambitious Ahiski Turks (willing to rehab residential and retail structures) contributed the following:

This can return us to being a community. I want to see children playing soccer in the park and helping the elderly with their groceries. I want people

to buy up old houses and make them nice again. I want to bring that sense of community back to my neighborhood. (Rollins 2011)

Thus, city administrators were conspicuously out front lobbying for formal adoption of the program weeks before the city council's unanimous affirmative vote. Throughout their publicity efforts, administrators took care to demonstrate how the immigrant-friendly proposal logically followed what already existed or had happened. The program coordinator, quoted in this newspaper account, was specific about this continuity:

The city has spent the past 10 weeks trying not to reinvent the wheel. Instead, a task force of city employees and plan authors is doing a best-practices inventory of what businesses and community groups are already doing to help integrate immigrants. "This is not new . . . so we want to ask all the banks what they're doing. Ask the hospitals, the churches, all the educational institutions. And let's create the catalogue, the map of what's currently being done, and put it out on the Internet, so . . . we can all learn from each other." (Kelly 2011)

Administrative officials were also deliberate in tracing the program's lineage back nearly twenty years to the city's role in hosting diplomatic negotiations that gave birth to the peace accords that halted armed conflict in the Balkan region.

As institutional designers, these leaders framed consistency well as they "closed the gap between authority and responsibility" (Wildavsky 1984, 60). Presumably, they were, in the words of Stephen Bailey (1965, 290), "consistent enough to deserve ethical respect from revered colleagues and from oneself" in that most opposing views were expressed by shrill anti-immigration voices from outside the region. Yet some gnawing questions remain—for example, how consistent is institutional design work such as this with the traditional parameters of discretion, such as John Rohr's regime values or arguments within the Finer-Friedrich debate? (For a summary of the debate, see Plant 2011.) Regarding regime values, can the apparent acquiescence of the city council be taken as a clear grant of administrative discretion? Do constitutional or statutory measures on immigration at the federal level come into play (Rohr 1989, 38)? With regard to Carl Friedrich (but not to Herman Finer, who would likely denigrate these officials for overstepping their roles), does the above consistency rhetoric that justifies the immigrant-friendly initiative constitute "reasoned answers for why discretionary decisions were made" that add up to administrative responsibility (Plant 2011, 474)? There is much here to consider in determining whether or to what extent institutional design work fits into administrative ethics as we know them.

In reference to the public ethics conversations of the 1990s, President George H.W. Bush's assessment (quoted in Chapter 1)—“It's not really very complicated. It's a question of knowing right from wrong”—still has its merits. Indeed, the particulars of the 2010 GSA scandal (mentioned above) and the 2012 U.S. Secret Service episode of illicit sex in Colombia appear neither complicated nor ambiguous. Indeed it is troubling that such unfortunate debacles still unfold in spite of extensive efforts on the part of the academy and professional public administrators in recent decades to improve the ethical character of public service. Perhaps our subsequent endeavors to devise effective organization remedies and codes of ethics can become more salient if tempered by Stephen Bailey's assertion that good efforts extend only so far in affecting morally ambiguous persons, policies, and events.

This volume asserts that President Bush's notion of public ethics as moral comportment represents merely a partial understanding of public service, one that misses the administrative responsibility to deal effectively with the various actors and forces that detract from public life. That responsibility obligates public administrators to acquire a professional skill-set (such as that outlined by Bowman, West, and Beck 2010) needed to *do ethics* and develop an aptitude for institutional design work. It also obliges those in the academy and elsewhere who offer ethical guidance to keep the high-hanging fruit in focus, as did Stephen Bailey in his 1965 essay on “Ethics and the Public Service.” Thomas Mann and Norman Ornstein conclude their recent examination of broken politics in America with the following statement: “We end where we began: it *is* even worse than it looks. But we are confident that if the worst has not yet hit, better times, and a return to a better politics, do indeed lie ahead” (2012, 201; emphasis in original). We can hope their optimism holds true. We can also count upon competent professionals in public service—some of whom we have known as colleagues or students—to *do ethics* in ways that hasten those better times ahead.

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